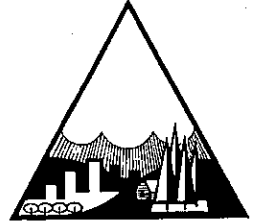


MEMORANDUM



TO: City Council

FROM: Jim Hendryx

RE: Measure 37 Training

DATE: August 18, 2005

C: Tim Ramis

A handwritten signature in black ink, which appears to read "Tim Ramis", is written over the "RE: Measure 37 Training" line.

As Council is aware, two Measure 37 claims have been filed. One claim, Grabhorn Measure 37 Compensation Claim (M372005-00003), is tentatively scheduled for September 13, 2005. Staff is finalizing the staff report with the City Attorney's office.

The City Attorney will provide Measure 37 training at the Council study session on August 23rd. Training will include background information on Measure 37, our code requirements, and how to conduct the hearing. Attached is a copy of the PowerPoint presentation the City Attorney will use during the training session.

MEASURE 37

Timothy V. Ramis
City Attorney

OUTLINE

- History
- Basic Provisions
 - Compensation/waiver
 - Timing
 - Procedure
- Tigard's Ordinance
 - Application
 - Tigard Procedure
 - Decision Options
 - Decision Maker
- Hearing Process

HISTORY

- After Measure 7, which was a constitutional amendment with similar provisions to Measure 37, was overturned by the Courts, the voters approved Measure 37 as a non-constitutional measure
- Measure 37 passed with 61% of the vote
- Measure 37 became effective in December 2004

BASIC PROVISIONS

- Governments are required to either
 - (1) pay compensation when land use regulations restrict the use of property causing a reduction in market value or
 - (2) waive the regulations

Compensation/Waiver

- Only those who owned at the time the regulations were adopted have a Measure 37 claims
 - Compensation claims are based on when property acquired by the current owner or family member
 - Waiver is based on the regulations in effect at the time the current owner acquired the property

Timing

- Claims must be brought within 2 years of the effective date of Measure 37, 2 years of passage of new regulations restricting use, or 2 years of enforcement

Procedure

- A claim (written demand for compensation) must be first made against the government enforcing the regulation
- If the government fails to pay or waive within 180 days, the owner can bring an action in circuit court
- If the owner prevails in circuit court, the owner is awarded attorney fees
- Local governments may adopt procedures

TIGARD'S ORDINANCE

- TMC Chapter 1.20
- Requires Measure 37 application to include information about the property, the owner(s), the regulation at issue, the amount of compensation claimed, and the extent of any requested waiver
- Requires the applicant to indicate a preference between compensation and waiver

Tigard Procedure

- Applicant to pay deposit for costs
 - Returned if applicant prevails
- Staff report and notice required
- Public hearing
 - Claimant and others have a right to present evidence and argument
 - Duration of testimony may be limited

Decision Options

- Deny the claim
- Pay compensation
- Waive or modify the regulations

Decision Maker

- Council to make final decision, but can delegate to others the responsibility to hold the hearing and make a recommendation

HEARING PROCEDURE

- Not a land use hearing or decision, so land use hearing requirements do not apply
- General due process concepts apply
 - Applicant has right to present evidence and argument (codified)
 - Tigard code expressly gives others the right to present evidence and argument
 - Due process may give the Claimant the right to rebut
- Code explicitly allows time limits at hearing

Decision Options

- Deny
 - Regulation does not restrict use
 - No reduction in market value
 - Untimely
 - Claimant/family not owner at right time
 - Within statutory exception (nuisance etc.)
 - City not responsible entity
 - Other
- Pay Compensation (and enforce regulation)
- Waive, modify or suspend regulation(s)

Measure 37

Text of Measure

The following provisions are added to and made a part of ORS chapter 197:

- (1) If a public entity enacts or enforces a new land use regulation or enforces a land use regulation enacted prior to the effective date of this amendment that restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation.
- (2) Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.
- (3) Subsection (1) of this act shall not apply to land use regulations:
 - (A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;
 - (B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
 - (C) To the extent the land use regulation is required to comply with federal law;
 - (D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitutions; or
 - (E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
- (4) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.
- (5) For claims arising from land use regulations enacted prior to the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the effective date of this act, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner of the property, whichever is later. For claims arising from land use regulations enacted after the effective date of this act, written demand for compensation under subsection (4) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.
- (6) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the circuit court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.
- (7) A metropolitan service district, city, or county, or state agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing

of a compensation claim under subsection (6) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (6) of this act.

(8) Notwithstanding any other state statute or the availability of funds under subsection (10) of this act, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(9) A decision by a governing body under this act shall not be considered a land use decision as defined in ORS 197.015(10).

(10) Claims made under this section shall be paid from funds, if any, specifically allocated by the legislature, city, county, or metropolitan service district for payment of claims under this act. Notwithstanding the availability of funds under this subsection, a metropolitan service district, city, county, or state agency shall have discretion to use available funds to pay claims or to modify, remove, or not apply a land use regulation or land use regulations pursuant to subsection (6) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(11) Definitions - for purposes of this section:

(A) "Family member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

(i) Any statute regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Land Conservation and Development Commission;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

(12) The remedy created by this act is in addition to any other remedy under the Oregon or United States Constitutions, and is not intended to modify or replace any other remedy.

(13) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

TIGARD MUNICIPAL CODE

Chapter 1.20 COMPENSATION FOR REDUCTION IN PROPERTY VALUE.

Sections:

- 1.20.010 Purpose.**
- 1.20.020 Definitions.**
- 1.20.030 Claims.**
- 1.20.040 Notice.**
- 1.20.050 Staff Report.**
- 1.20.060 Decision Maker Proceedings.**
- 1.20.070 Public Hearing.**
- 1.20.080 Decision Maker Decision.**
- 1.20.090 Delegation of Authority and
City Council Review.**
- 1.20.100 Action by Neighboring
Property Owners.**
- 1.20.110 Authority.**
- 1.20.120 Deposit and Responsibility for
Costs.**
- 1.20.130 Severability.**

1.20.010 Purpose

The purpose of this chapter is to provide procedures and standards for claims for compensation made pursuant to 2004 state ballot Measure 37.

1.20.020 Definitions

As used in this chapter, unless the context requires otherwise:

A. "Affected property" means the private real property that is alleged to have suffered a reduction in fair market value as result of the City's regulation restricting the use of that property and for which a property owner seeks compensation for the reduction in value.

B. "Claimant" means the property owner who submits a claim for compensation under Measure 37 in accordance with Section 1.20.030.

C. "Decision Maker" means the City Council or any person, board, commission, or other entity to whom the Council has delegated authority to make decisions on Measure 37 claims.

D. "Regulation" shall mean a provision of the City's comprehensive plan, community development code and transportation ordinances.

E. "Restricts the use of property" means prohibiting a particular use of the property or making that use only permissible under certain conditions. Regulations requiring or setting fees to be charged are not restrictions on the use of property.

F. "Manager" means City Manager or designee.

1.20.030 Claims

A property owner wishing to make a claim against the City under Measure 37 shall first submit a claim to the City. A claim under Measure 37 must be in writing and include:

A. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.

B. The name and contact information of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property and the names and relationships of family members that are previous owners.

TIGARD MUNICIPAL CODE

C. A list of all persons with an ownership interest in or a lien on the property.

D. Identification of the regulation that is alleged to restrict the use of the affected property and a statement describing how the restriction affects the value of the property.

E. A statement whether the Claimant prefers compensation or a waiver, suspension or modification of the regulation, and a statement describing the extent to which the regulation would need to be waived, suspended or modified to avoid the need for compensation. A description of the proposed use must be provided.

F. The amount claimed as compensation and documentation supporting the amount. The documentation shall include a market analysis, an appraisal, or other documentation at least equivalent to a market analysis.

G. The name and contact information of the Claimant's authorized representative or representatives, if applicable.

1.20.040 Notice

The City shall provide notice of the hearing required by Section 1.20.070 to all owners of the property, lien holders and security interest holders, record owners of property within 500 feet of the property, recognized community participation organizations for the area where the property is located, and anyone who has requested notice at least seven days before the hearing. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim or statement describing the extent to which the regulations would need to be waived or suspended, the City contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Failure of any person to receive notice or any defect in the notice shall not

invalidate any action taken or decision made at the hearing.

1.20.050 Staff Report

City staff shall prepare a report analyzing the claim. The staff report may be reviewed by the Community Development Director, Finance Director, and Manager before being submitted to the Decision Maker.

The staff report shall be submitted to the Decision Maker, mailed to the Claimant, and made available to the public at least seven days before the public hearing required by Section 1.20.070.

1.20.060 Decision Maker Proceedings

The Decision Maker shall hold a public hearing on the claim. The public hearing should normally be set within 150 days of submission of the claim but may be set at any time. The Decision Maker may hold an executive session on the claim at any time.

1.20.070 Public Hearing

The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The Decision Maker may limit the duration of testimony.

1.20.080 Decision Maker Decision

A. In deciding the claim, the Decision Maker may take any of the following actions:

1. Deny the claim based on any one or more of the following findings:

a. The regulation does not restrict the use of the private real property.

TIGARD MUNICIPAL CODE

b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.

c. The claim was not timely filed.

d. The Claimant is not the current property owner.

e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.

f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.

g. The regulation is required by federal law.

h. The regulation protects public health and safety.

i. The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted or enforced by the City.

j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.

k. The City has not established a fund for payment of claims under Measure 37.

l. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through k.. The basis for this finding must be clearly explained.

2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays

compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose. The City may require any person receiving compensation to sign a waiver of future claims for compensation under Measure 37 and the City may record that waiver with the County Recorder.

3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property.

4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be for the specific property only unless the City follows the procedure for a legislative land use decision.

5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the claim was filed. The specified date shall allow the City time to process the contributions and pay compensation.

B. The Decision Maker may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The Decision Maker may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the Decision Maker directs staff to negotiate, the matter shall be set for further action by the Decision Maker no less than 175 days from the date of the notice of claim became

TIGARD MUNICIPAL CODE

complete. The Council shall take final action within 180 days of the claim. The Decision Maker shall take actions 2 through 5 only if it determines the claim is valid.

C. A decision by a Decision Maker other than Council shall not be a final decision, but shall be a recommendation to Council.

1.20.090 Delegation of Authority and City Council Review

The Council may delegate authority to act as a Decision Maker to any person, board, commission or other entity by motion, resolution or ordinance. The Council shall review all recommendations of the Decision Maker and make the final decision. If a Decision Maker other than Council has made a recommendation to Council, Council may act on the recommendation by motion or order without a Council hearing. The Council may approve recommendations on its consent agenda.

1.20.100 Action by Neighboring Property Owners

If a claim results in a waiver of enforcement of a regulation and the development allowed by the waiver causes a reduction in value of other property located in the vicinity of the Claimant, those property owners shall have the right to maintain an action against the Claimant in state circuit court to recover the amount of the reduction. The nearby property owners, if successful, shall be entitled to an award of reasonable attorney fees. This section does not create a right of action against the City.

1.20.110 Authority

The City Council shall have the authority to take the actions listed in Section 1.20.080, including the authority to waive or suspend any provision of any City code, ordinance or

resolution, notwithstanding any inconsistent provision in this code or the community development code. The City may retain an appraiser to assist the Decision Maker or Council determination.

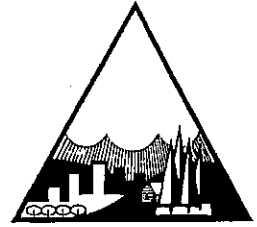
1.20.120 Deposit and Responsibility for Costs

The Claimant shall provide a deposit of \$1,000 at the time the claim is filed with the City. If the claim is determined to be valid, the City shall refund the entire deposit. If a claim is denied and ultimately determined to be invalid, the Claimant shall reimburse the City for the costs the City incurred in processing the claim. If the amount of reimbursement exceeds the cost of deposit, the Claimant shall pay any additional amounts within 30 days of a demand by the City for full reimbursement. If the amount of reimbursement is less than the deposit, the City shall refund the difference to the Claimant. The City shall provide an invoice detailing its costs when demanding additional reimbursement or providing a partial refund.

1.20.130 Severability

If any section, phrase, clause, or part of this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect. (Ord. 04-12, Ord. 04-13).■

MEMORANDUM



TO: City Council

FROM: Jim Hendryx *Jim Hendryx*

RE: City Center Advisory Commission Appointments

DATE: August 18, 2005

My memo to Council on August 10th indicated that Council is scheduled to consider a resolution appointing 4 citizens to the City Center Advisory Commission on August 23rd. The last interview was held on August 15th. The Council subcommittee made its decision on the candidates and forwarded the information to me.

As I indicated in my previous memo, the packet materials are being sent to you later than usual. Attached is the Agenda Item Summary and Resolution for your August 23rd meeting.

AGENDA ITEM # _____
FOR AGENDA OF 8/23/05

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Appoint Citizen Members to the City Center Advisory Commission
PREPARED BY: Duane Roberts DEPT HEAD OK file for JWH CITY MGR OK cl

ISSUE BEFORE THE COUNCIL

Should Council approve a resolution making four citizen at-large appointments to the City Center Advisory Commission?

STAFF RECOMMENDATION

Staff recommends staff approve the proposed resolution making the appointments.

INFORMATION SUMMARY

At its May 10th meeting, Council approved a resolution establishing the initial membership of the City Center Advisory Commission (CCAC) to include 6 Downtown Task Force members, 1 Planning Commission member, 1 Park and Recreation Board member, and up to 4 City residents or property owners at-large. The City Center Advisory Commission is responsible for developing a draft urban renewal plan. This urban renewal plan is an action plan that will lay out the detailed funding sources and timeline for the physical accomplishment of the Tigard Downtown Improvement Plan.

The 4 at-large positions are unfilled at this time. Altogether, 7 people expressed interest in serving on the City Center Advisory Commission and were interviewed by the Mayor's Appointments Advisory Committee during July and August. One candidate later withdrew her name from consideration for personal reasons. Following these interviews, the Appointments Committee voted to forward to Council a recommendation to fill the 4 vacant at-large positions with the following candidates: Lily Lilly, Alice Ellis Gaut, Roger Potthoff, and Suzanne Gallagher.

It is recommended that Council consider appointing the two remaining community candidates (Alexander Craghead and Ralf Hughes) as alternates. These would be unofficial, non-voting positions. The alternate members could attend CCAC meetings and would be available to fill a vacancy should any at-large member resign or move away.

The attached proposed resolution would appoint Lily Lilly, Alice Ellis Gaut, Roger Potthoff, and Suzanne Gallagher to serve on the CCAC as at-large members and Ralf Hughes and Alexander Craghead to serve as alternate at-large members.

OTHER ALTERNATIVES CONSIDERED

No alternatives considered

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Community Character & Quality of Life, Volunteerism Goal #1: City will maximize the effectiveness of the volunteer spirit to accomplish the greatest good for our community.

ATTACHMENT LIST

Attachment 1: A Proposed Resolution Appointing Members and Alternates to the City Center Advisory Commission.

FISCAL NOTES

These are volunteer positions and have no budgetary impact.

i/citywide/sum/ccac.appointments

CITY OF TIGARD, OREGON

RESOLUTION NO. 05-_____

A RESOLUTION APPOINTING MEMBERS AND ALTERNATES TO THE CITY CENTER
ADVISORY COMMISSION.

WHEREAS, Resolution 05-28 "A Resolution on the Initial Selection Process for City Center Advisory Commission" states in Section 4 that the City Center Advisory Commission shall include membership of up to four City residents or property owners; and

WHEREAS, seven people expressed interest in serving on the City Center Advisory Commission and were interviewed by the Mayor's Appointments Advisory Committee during July and August 2005; and

WHEREAS, following these interviews, the Appointments Committee voted to forward to Council a recommendation to fill the four vacant at-large positions with the following candidates: Lily Lilly, Alice Ellis Gaut, Roger Potthoff, and Suzanne Gallagher; and

WHEREAS, Ralf Hughes and Alexander Craghead also expressed interest in serving on the City Center Advisory Commission and were interviewed by the Mayor's Appointments Advisory Committee,

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Lily Lilly, Alice Ellis Gaut, Roger Potthoff, and Suzanne Gallagher shall be appointed to the City Center Advisory Commission as at-large members .

SECTION 2: Ralf Hughes and Alexander Craghead shall be appointed to the City Center Advisory Commission as non-voting, alternate at-large members.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2005.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

AGENDA ITEM # _____
FOR AGENDA OF August 23, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Mountain View Estates Subdivision Annexation (ZCA2004-00004)/
Arlington Heights 3 Subdivision Annexation (ZCA2005-00001)/Wilson Ridge Subdivision Annexation
(ZCA2005-00002)/Alberta Rider/Summit Ridge Subdivision Annexation (ZCA2005-00003)

PREPARED BY: Morgan Tracy DEPT HEAD OK A. J. CITY MGR OK CP

ISSUE BEFORE THE COUNCIL

Should the City Council approve the proposed annexation requests?

STAFF RECOMMENDATION

Adopt the four attached Ordinances approving the annexation requests.

INFORMATION SUMMARY

City Council held a public hearing on these four annexation requests on August 9, 2005. Prior to the hearing, staff provided Council with supplemental findings demonstrating compliance with ORS Chapter 222, and excluding Ms. Alberta Rider's life tenancy area from the annexation since consent to the annexation had not been obtained from her. Staff revised the map and legal description to reflect this change. During the hearing, a number of residents provided testimony, and two of the applicants (for Wilson Ridge and Arlington Heights 3) spoke in support of the annexation requests. Several individuals requested that the record remain open for 7 days to allow submittal of additional written comments. Upon direction from the City Attorney, the Council closed the public hearing portion and held the record open for written comments until August 16, 2005 at 5:00. Twelve individuals submitted comments during that period as shown in ATTACHMENT 1. Staff also provided written responses to the questions raised as shown in ATTACHMENT 2.

The City Attorney prepared legal findings to respond to the comments that were raised during the August 9th hearing, and these have been included with each annexation package, ATTACHMENTS 3 through 6.

All four annexations represented here comprise 63 parcels totaling 47.34 acres. As indicated in the staff report to City Council, the proposed annexations meet the applicable standards. Pursuant to Chapter 18.320.020.C of the Tigard Development Code, the Comprehensive Plan designation and the City's zoning is automatically applied to property upon approval of the annexation by Council.

OTHER ALTERNATIVES CONSIDERED

Deny the annexation request, approve annexation of only some of the parcels, or include additional "island" parcels into the annexation proposal.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Growth and Management Goal #2: Urban Services are provided to all citizens within Tigard's urban growth boundary and recipients of services pay their share.

ATTACHMENT LIST

1. **Testimony Received After Close of the Public Record During 7-day Written Comment Period**
 1. Email from Mark Padgett, received August 16, 2005.
 2. Fax from Sean Foushee, applicant for Mt. View Estates, received August 15, 2005.
 3. Letter from Alpha Community Development, applicant for Wilson Ridge, received August 16, 2005.
 4. Letter from Tom Weber, applicant for Arlington Heights 3, received August 16, 2005.
 5. Email from Julie Russell, received August 16, 2005
 6. Letter from LaVelle and Marie Day, received August 16, 2005
 7. Email from Jackie and Gary Kisling, received August 16, 2005
 8. Letter from Henry Kane, received August 16, 2005
 9. Email from Jim Wolf, dated 8/16/05
 10. Email from Bill Dickinson, dated 8/16/05
 11. Email from Lisa Hamilton-Treick, dated 8/16/05
 12. Email from Phil Decker, dated 8/16/05
2. **Response from Staff to Questions Raised During 8/9/05 Hearing.**
3. **ZCA 2004-00004 (Mountain View Estates Annexation Package)**
 - Staff Report to the City Council
 - Supplemental Finding Concerning Compliance with ORS Chapter 222
 - City Attorney Findings in Response to Comments
 - "Draft" City Council Ordinance
 - Exhibit A: Legal Description
 - Exhibit B: Tax Map
 - Exhibit C: Vicinity Map
4. **ZCA 2005-00001 (Arlington Heights 3 Annexation Package)**
 - Staff Report to the City Council
 - Supplemental Finding Concerning Compliance with ORS Chapter 222
 - City Attorney Findings in Response to Comments
 - "Draft" City Council Ordinance
 - Exhibit A: Legal Description
 - Exhibit B: Tax Map
 - Exhibit C: Vicinity Map
5. **ZCA 2005-00002 (Wilson Ridge Annexation Package)**
 - Staff Report to the City Council
 - Supplemental Finding Concerning Compliance with ORS Chapter 222
 - City Attorney Findings in Response to Comments
 - "Draft" City Council Ordinance
 - Exhibit A: Legal Description

Exhibit B: Tax Map
Exhibit C: Vicinity Map

6. **ZCA 2005-00001 (Alberta Rider Summit Ridge Annexation Package)**
Staff Report to the City Council
Supplemental Finding Concerning Compliance with ORS Chapter 222
City Attorney Findings in Response to Comments
"Draft" City Council Ordinance
Exhibit A: REVISED Legal Description
Exhibit B: REVISED Tax Map
Exhibit C: Vicinity Map

FISCAL NOTES

There is no direct fiscal impact resulting from annexing the properties. Costs associated with provision of city services will be offset by the collection of SDC's at time of development.

ZCA2004-00004 Mountain View Estates Annexation
ZCA2005-00001 Arlington Heights 3 Annexation
ZCA2005-00002 Wilson Ridge Annexation
ZCA2005-00003 Alberta Rider/Summit Ridge Annexation

Testimony Received After Close of the Public Record
During 7-day Written Comment Period

Deadline for Additional Written Testimony: 5:00 p.m., August 16, 2005

1. Email from Mark Padgett, received August 16, 2005.
2. Fax from Sean Foushee, applicant for Mt. View Estates, received August 15, 2005.
3. Letter from Alpha Community Development, applicant for Wilson Ridge, received August 16, 2005.
4. Letter from Tom Weber, applicant for Arlington Heights 3, received August 16, 2005.
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9. Email from Jim Wolf, dated 8/16/05
10. Email from Bill Dickinson, dated 8/16/05
11. Email from Lisa Hamilton-Treick, dated 8/16/05
12. Email from Phil Decker, dated 8/16/05

From: "Mark Padgett" <mark@padgett.net>
To: <cathy@ci.tigard.or.us>
Date: 8/16/2005 9:08:50 AM
Subject: from Mark Padgett re: annexation

Cathy - please add this email to the written record that was held open until today (Aug. 16, 2005). Thank you.

Councilors - as I have listened to the people from the unincorporated area of Bull Mountain testify, one underlying theme has been running through their statements. They seem to think that you have the same level of obligation to represent their wishes as you do for City of Tigard residents. This is just not the case. We all know that the annexation issue is really one of taxing equity for the people of our city. Allowing even more property to develop outside the City when the property will be occupied by more people who will be using most of the City's resources at the same level of City residents is just not in the best interests of our residents and adds to this taxing inequity.

Perhaps the best illustration of this came in the testimony of one Bull Mountain resident (as quoted in last week's Tigard Times) that he is "already using the Tigard library and parks". This is exactly the point.

I implore you to first and foremost keep in mind the best interests of the citizens of Tigard. You are not an elected body from anywhere else. If the Bull Mountain residents want you to represent their interests at the same level of those of Tigard residents, then they should annex. Until then, let them find their recourse from their chosen government, the Board of County Commissioners. That's their choice.

I must tell you I certainly am not the only citizen of Tigard who would resent subsidizing the eventual residents of even more property. I hope you agree with me that you should annex this property and all other property that presents itself in the same manner.

Let's do what's best for the citizens you truly represent.

Please note I am writing this as a private citizen and not as a representative of the Planning Commission.

Thank you.
Mark Padgett
voice 503.590.5226
fax 503.590.5227
cell 503.997.MARK
email mark@padgett.net

ACCENT RESIDENTIAL HOMES

2

12583 SW AUTUMNVUE ST.

TIGARD OR 97224

(503) 670-4939

FAX (503) 670-4938

FACSIMILE TRANSMITTAL SHEET

TO:

Morgan Tracy

FROM:

Accent Residential Homes

COMPANY:

City of Tigard

DATE:

8/15/05

FAX NUMBER:

503-684-7297

TOTAL NO. OF PAGES INCLUDING COVER:

2

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

503-670-4939

RE:

YOUR REFERENCE NUMBER:

Voluntary Annexation - Mt. View Estates

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

Please let me know if you require anything further from us~

Thank you,

Angel Sully

Accent Residential Homes, Inc.

503-670-4939

503-914-9482 cell



2

August 15, 2005

Morgan Tracy
Associate Planner
City of Tigard
13125 SW Hall Blvd.
Tigard OR 97223

Mr. Tracy:

Accent Residential Homes is voluntarily annexing the property at 12415 SW Beef Bend Rd, the Mountain View Estates development, into the city of Tigard.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Foushee", written over a horizontal line.

Sean Foushee
President
Accent Residential Homes, Inc.



August 15, 2005

RECEIVED PLANNING

Morgan Tracy, Associate Planner
City of Tigard
13125 Hall Blvd.
Tigard, OR 97223

AUG 16 2005

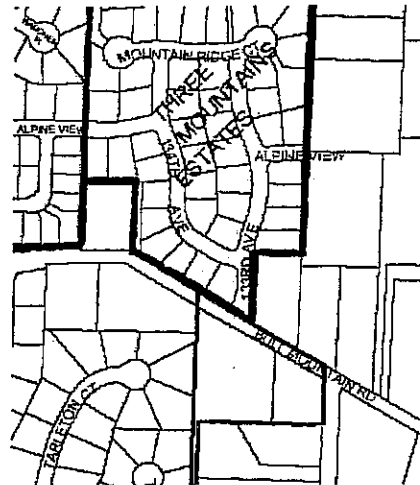
CITY OF TIGARD

Re: ZCA 2005-00002
ORD 05-11

Dear Mr. Tracy,

Pursuant to the comments raised at the August 9, 2005 meeting of Tigard City Council, please note the following with regard to the proposed annexation of the Wilson Ridge subdivision:

- It is the applicant's assertion, which can be readily verified by the map at right, that the proposed annexation of the Wilson Ridge subdivision does not create an "island" or irregular City boundary. Instead, the proposed annexation is effectively a southerly extension of City limits formed by the Three Mountains Estates subdivision located due north across SW Bull Mountain Road. Additionally, the Tigard Police Department has reviewed the proposal without objection, and has not made any comment with regard to difficulty of service delivery or confusion of response.
- With regard to citizens' testimony suggesting that consent to annex was coerced in some fashion; we would like to state for the record, as we testified before Council, that there was no pressure whatsoever to consent and that it is our wish that the subdivision be located within City limits.
- Lisa Hamilton's testimony included reference to a request or deal in principle to remove the "panhandle" portion of the site from annexation. Alpha Community Development wishes to make clear that the portion of land in question is part of the southwesternmost lot and not a right-of-way or easement. Further, we have no knowledge of such a deal or discussions to that effect with Washington County or City of Tigard officials, or any other such body.



www.alphacommunity.com

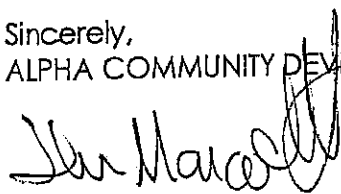
- In her testimony, Ms. Hamilton also questioned the density of the proposed 14-lot Wilson Ridge subdivision, stating that it may be incompatible with neighboring properties/developments in that it is too dense. Please note that as applicant, Alpha Community Development designed the subdivision to comply with City of Tigard R-7 zoning, which governs this site within the Urban Service Area. Even if Washington County R-6 (6 units/acre) zoning had been in effect, the resulting subdivision would have contained the same number of lots/units. Density calculations are as follows:

City of Tigard R-7		Washington County R-6	
gross area	116,630 sq. ft.	gross area	116,630 sq. ft.
- right of way	31,824 sq. ft.		= 2.68 acre
- private street	6,758 sq. ft.		<u>x 6 units</u>
= net area	78,105 sq. ft.		= 16 lots
	<u>/ 5,000 sq. ft.</u>		
	= 15 lots max.		
	<u>x 0.80</u>		
	= 12 lots min.		

Being that Section 300-2.1 of the Washington County code states that "Site size shall include the area of the subject lot(s) or parcel(s), in acres or portions thereof, excluding all areas **currently** dedicated for public right-of-way," R-6 density is calculated from the gross site, not the net. Therefore, it is the applicant's assertion that the density of the subdivision proposed under Tigard zoning is similar to that under Washington County, if not less.

Thank you for your attention to this application and our written comments. Please do not hesitate to contact either project manager, Jeff Vanderdasson, or me at (503) 452-8003 with any questions or concerns.

Sincerely,
ALPHA COMMUNITY DEVELOPMENT



John Marquart
Staff II Planner

cc: Al Jeck, Alpha Community Development

TERRA-WEBER, LLC

Property Development

4

August 15, 2005

RECEIVED

AUG 16 2005

CITY OF TIGARD
PLANNING/ENGINEERING

Tigard City Council
Tigard City Hall
13125 SW Hall Blvd
Tigard, OR 97223

Re: Zone Change/Annexation (ZCA) 2005-00001

Dear Councilors,

We are the Owner/Developers of Arlington Heights No. 3 that is being considered for annexation into the City of Tigard. It was decided at the public hearing held on August 9, to keep the record open for 7-days in order to receive additional information. To that end I would like to offer the following points.

1. We own the Property in question and it is our desire to be annexed to the City of Tigard.
2. Whether the City requires annexation or not I choose to be annexed in order to receive the benefits of being a resident of the City.
3. We have not been coerced by the City to annex. We are involved in other projects that are not contiguous to the City limits but if they did qualify I would voluntarily annex.
4. I believe the City has every right to require annexation if City services are extended to accommodate development. This is an accepted practice in other jurisdictions.
5. The "Friends of Bull Mountain" do not represent me or anyone I know. They seem to demand all of the benefits from the City but don't want to pay the bill. That hardly seems fair and in fact I believe that anyone who is not a resident of the City does not have a standing in these proceedings.

Again, as the Owners of the subject Property I urge you to approve this annexation request without delay.

Very truly yours,



Tom Weber

Terra-Weber, LLC

5

council mail councilmail - Annexation Testimony

From: "Julie Russell" <jarussell59@comcast.net>
To: <cathy@ci.tigard.or.us>, "Craig Dirksen" <craigd@ci.tigard.or.us>, "Nick Wilson" <nickw@ci.tigard.or.us>, "Sydney Sherwood" <sydney@ci.tigard.or.us>, "Tom Woodruff" <tomw@ci.tigard.or.us>
Date: 8/16/2005 11:58 AM
Subject: Annexation Testimony

Dear Cathy,

Please submit my written testimony regarding the annexation of the four properties on the agenda last week. My testimony is attached.

Best Regards,

Julie Russell

August 16, 2005

Julie Russell
12662 SW Terraview Dr
Tigard, OR 97224

Dear Mayor and Council Members,

I am submitting my written testimony to oppose the annexation of the four properties (Mountain View Estates, Arlington Heights 3, Wilson Ridge and Alberta Rider/ Summit Ridge.) I testified against this annexation on August 9, 2005 and request that my written testimony be made part of the public record.

I would have hoped that the council would have considered the defeat of the Bull Mountain annexation vote in Nov. of 2004. Where 89% of the residents of the mountain clearly stated that they did not want to be annexed to Tigard.

It is quite clear from your aggressive strategy that Tigard intends to proceed by forcing builders to annex by denying building permits, unless they agree to annex. It is also quite clear that you intend to create irregular boundaries and islands, thus taking away property owner's right to vote on annexation decisions. This is abusive and bad public policy. The Oregon legislature did pass some laws this session to change annexation policy. HB 2484 guarantees a dual majority vote, and SB 887 prevents island annexation for at least two years. I think Tigard needs to be careful to follow the intent of these laws that have been passed and will continue to be passed to protect the rights of residents to choose whom will govern them.

I disagree with Tigard's assumption in the Comprehensive Plan Policy 2.1.1. The city shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process. Tigard doesn't have or recognize any Neighborhood Planning Organizations in the unincorporated area, (Urban Service Area), and Tigard has admitted they do not recognize CPO4B. CPO4B is the Citizen Participation Organization for Bull Mountain and parts of Tigard. Tigard has openly stated they will not send city staff to CPO4B meetings and do not acknowledge the CPOs as they are organized by Washington County. As a result, unincorporated Bull Mountain residents have no recognition in community organizations in the city. Tigard limits the involvement of unincorporated Bull Mountain residents on committees in Tigard, and refuses to appoint those residents to various committees, such as the budget committee. I believe this violates the policy. Also Tigard does not involve citizens in the pre-application meetings, unlike Lake Oswego. Tigard did not notify every property owner in Arlington Heights 1 and 2 regarding this hearing. Those property owners could be affected if this annexation passes, as they will become an island, and could be annexed without a vote.

I dispute Tigard's findings in Policy 10.1.2. Tigard admits that none of these annexations eliminate an existing "pocket" or "island" of unincorporated territory. Tigard states that these annexations will not create an irregular boundry. This proposed annexation will definitely create irregular boundaries and difficulties for service providers to know if the property is inside or outside of city limits. The Alberta Rider/Summit Ridge proposal states that it is addressing a situation where parcels fall in and outside of city limits.

Their formation is the result of disjointed annexation and plat approval timing. This was due to the annexation in Dec. 2004 that again created irregular, inconsistent boundaries. The Tigard Code 10.1.2 specially states the requirement a. The annexation eliminates an existing "pocket" or "island" of unincorporated territory, or b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside of city limits. These four annexations do not comply with either of these requirements. The Washington County Sheriff's Department did not have the opportunity to comment on these annexation requests and the affect on the service of the area, and the affect of the withdrawal of those properties from the Enhanced Sheriff's Patrol District.

I dispute CDC Section 18.320.020. This area has been identified as severely park deficient by Washington County in the Bull Mountain Community Plan in 1983, and the City of Tigard. There are no solutions for sufficient capacity to remedy the lack of parks. Annexation to Tigard, by allowing additional homes with no identified parks or open space only increases this deficiency. Tigard has a goal of providing 11 acres of parkland per 1,000 residents, but currently only has 8 acres per 1,000 residents. These annexations only create more of a park deficiency for Tigard. I also dispute the fact that the roads and transportation plan can handle the additional capacity created by these subdivisions. Bull Mountain Road and Beef Bend Road are the only access points to Hwy 99, which is at or near capacity at every intersection through Tigard per ODOT. Additional building permits only make the already overloaded Highway 99 worse. These subdivisions also give access to collectors and aterials of Beef Bend Road and Bull Mountain Road, which the Washington County code and transportation plans say few access points should be granted.

I dispute the timing and assignments of the zoning designations as they completely ignore the Bull Mountain Community Plan zoning, which still identifies the slopes and summit as being low density, not medium density, and the zoning per the Bull Mountain Community Plan is still R-6, or 6 lots per acre not 7. The assignment of these designations shall occur automatically and concurrently with the annexation. So why was Summit Ridge allowed to build at R-7 designations, when it was not annexed to Tigard and still under Washington County zoning of R-6?

I dispute the fact that all residents were notified of the proposal to annex parts of Bull Mountain Road and Beef Bend Road. This is not clear on the vicinity map. Which roads or parts of roads are actually being annexed? Who was notified? All surrounding residents and affected property owners? When did parts of Bull Mountain Road and Beef Bend Road become city streets? The Washington County Transportation Plan still identifies them as county streets. I do not know of any residents or Citizen Participation Organizations being advised that any roads in the area have experienced a change in jurisdiction.

What about the residents east of SW 133rd? This could create an island for all of those property owners. What comments were received by the Washington County Sheriff's department and other service providers, about these irregular boundaries and islands?

Who will service those areas, and how will this confusing patchwork of boundaries be serviced?

I dispute Metro 3.09 conclusions. The proposed annexation will interfere with the timely, orderly and economic provisions of public facilities and services. Public facilities and services are provided by various service districts and do not require annexation in order to continue those services.

I oppose the annexation file of Alberta Rider/Summit Ridge Annexation. Alberta Rider is a public school and should not be required to annex to Tigard prior to receiving a final building permit. I believe again this is very bad public policy and quite probably illegal. The only thing to be gained by requiring Alberta Rider Elementary School to annex is the surrounding of neighboring property, and the creation of islands to continue the aggressive annexation policy of Tigard. Also the property owner Alberta Rider did not consent to annex to Tigard. Alberta Rider and Summit Ridge should not be processed in the same annexation, one is owned by the Tigard/Tualatin School District and the other is a private developer.

I oppose the Summit Ridge annexation, as Arbor Summit and Summit Ridge were not bordering city limits, when they were annexed in Dec. of 2004. I also dispute the statement that a double majority method was used for one of the parcels of Summit Ridge, Venture Properties is not an elector in the area, but simply the developer, so how did that election take place, and how can the future residents be held accountable to this hostile annexation?

I disagree with the statement that some of the property in Arbor Summit and Summit Ridge were inside the city and some outside of the city. None of this property was inside of the city prior to the development of the property and annexation in Dec. 2004.

I oppose the annexation of the Arlington Heights 3 subdivision on the grounds that they are annexing to the Arlington Heights Homeowners Association and are part of the Arlington Heights Neighborhood. Arlington Heights 1 and 2 are not annexed to Tigard and were approved under county land use regulations in 1997. I don't believe Tigard can legally annex only one portion of a subdivision.

Respectfully,

Julie Russell

RECEIVED C.O.T.

AUG 16 2005

Administration

August 15, 2005

City Council
Tigard, Oregon

1:07 pm
Du

Re: Annexation of approximately 47 acres on Bull Mountain

Dear Mayor Dirksen and City Council Members,

We understand that the record is being held open until August 16, 2005. We are submitting these comments and request that they be made a part of the public record on this matter.

It is very obvious that the City of Tigard is trying to strategically annex land in a manner to prevent the citizens of unincorporated Bull Mountain from considering annexation to King City as an alternative to annexing to Tigard. This would also cause problems for considering the option of incorporating as a new city.

It is still the same of pressure tactics that Tigard has used during the past number of years and it is very tiring. However, it has made us absolutely more determined to help the Friends of Bull Mountain to challenge this and any other tactic that the City of Tigard comes up with to hamper an orderly, considered approach to what would be best for the unincorporated area of Bull Mountain.

We think it is unconscionable that the City of Tigard has put such great pressure on developers to get their testimony in support of the annexation. From the developer who testified, his testimony stated the following facts:

1. That the developer has several projects going on in Tigard.
2. That his Bull Mountain project is being held up because of this annexation proposal. He stated that he hoped a decision would not be delayed, otherwise he would "lose the current season".
3. That he lived in an apartment in Tigard, not a condo or town house or separate home. That suggests that it is not a permanent arrangement, even though he can say with all sincerity that he is a resident of Tigard. As a developer with multiple projects going on in the City of Tigard that doesn't fit the normal developer's life style.


Within the scope of discretion that the City of Tigard can legally enforce when working with developers, this developer's life could be made "much easier", if he sides with the City. If he were to object or to remain neutral, his life could be made "hellish". Can anyone prove these statements? The answer is no! But it fits the pattern of the city with this proposed annexation, with the one vote group position of the City on the previous election (until public pressure caused a change), with the required signing of statements requiring an unincorporated residents

to sign to get services, which state they will not contest annexation and with other such tactics exercised by the City.

An understanding person could ask the question, "What other position could this developer take than to support this annexation?" The answer is simple, "NONE". The city has forced him into this position. We find it difficult to believe that he would willingly on his own initiative ask to be annexed to the city with it costing him considerable delay and money. He is already concerned about "losing the season". He is a business man. He wouldn't make that kind of decision. The city has forced him into this position.

Without the developer's support, you have no annexation.

Annexation was turned down by the voters, which we support. We are opposed to this annexation and intend to pursue every legal means to stop it. Unfortunately this developer is caught in the middle and will be hurt the most. It is unfortunate that the City has placed him in this position.


Marie Day

LaVelle & Marie Day

14055 SW High Tor Dr
Tigard, OR 97224

council mail councilmail - Bull Mountain Annexation

From: "Jackie & Gary Kisling Home" <garykisling@comcast.net>
To: <craigd@ci.tigard.or.us>
Date: 8/16/2005 3:52 PM
Subject: Bull Mountain Annexation

Mayor Dirksen and Council Members,

We wish to oppose the annexation of the four properties designated by the Tigard City Council, as well as all other remaining unincorporated properties on Bull Mountain that were not designated.

We live in Mountain Gate. We voted against annexation in Nov. of 2004. You should remember that 90% of the voters said "No."

This was followed by HB2484 and HB2722. These laws are to protect the residents of the affected properties.

Your approach has been and continues to be that of a hostile takeover. We know that Tigard has a big budget problem that would be resolved by higher taxes imposed on unincorporated Bull Mountain residents. Your approach continues to be aggressive and without respect for the wishes and legal rights of the residents.

You hold a very important position in city government. You should be a good listener, a skilled long range planner, and have the ability and know-how to negotiate for a compromise that leaves all sides committed. If you can't think of any way to negotiate a compromise with Bull Mountain residents ... you need help from those of us in unincorporated Bull Mountain!

Jackie & Gary Kisling
14485 SW Peachtree Dr.
Tigard, OR 97224
503-590-5753

RECEIVED C.O.T.

AUG 16 2005

Administration

4:38 PM
ola

Henry Kane
12077 SW Camden Lane
Beaverton, Oregon 97008
503.643-4054

HAND-DELIVERED

August 16, 2005

Mayor and Councilors
Tigard City Council
13125 SW Hall Blvd.
Tigard, OR 97223

Re: Objection to forced annexation of unincorporated territory in reliance on forced annexation provision of ORS 222.750 on ground forced annexation violates Oregon Constitution, Article II, §§ 1 and 2

Mayor Dirksen and Councilors:

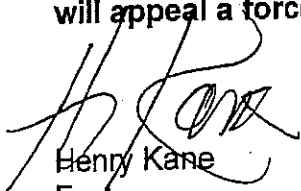
Attached to this letter are pages 11-15 of a Court of Appeals brief stating in substance that the Oregon Constitution forbids the legislature to enact a law purporting to forbid a qualified voter to vote.

In addition to the cases cited in the attachment, see Livesley v. Litchfield, 47 Or 248-49, 88 Pacific142, headnote 3 (1905):

"3. The provisions of Salem charter * * * prohibiting any person from voting at any election of said city who has not paid a road poll tax for the year in which he offers to vote, unless exempt as otherwise in said charter provided, is void as in conflict with Const. Or. Art. II, § 2, prescribing the qualifications of electors at all elections not otherwise provided by said constitution." (emphasis added)

ORS 222.750 "island annexations" without allowing residents and property owners to vote on whether they wish to be annexed also violates the Equal Protection of the Laws and Due Process of Law Clauses of the Fourteenth Amendment to the U.S. Constitution.

Please consider this letter formal notice that if the City of Tigard attempts to annex unincorporated territory in reliance on ORS 222.750 without allowing a vote, the undersigned will offer oral and written testimony opposing forced annexation, and **will appeal a forced annexation order to the Land Use Court of Appeals.**



Henry Kane
Encl.

(no paragraph)

We emphasize again what Chief Justice Waite said in *Munn v. Illinois*, 94 U. S. 113, 134, 'For protection against abuses by legislatures the people must resort to the polls, not to the courts.' (emphasis added)

Neither the Board nor the city has cited any appellate court decision rejecting a constitutional challenge to a right to vote statute with a holding stating in substance that "the people must resort to the polls, not to the courts." *Id.*

There is a fundamental distinction between the constitutional right to vote and the right to engage in a calling or profession.

Restrictions or denial of the right to vote is subject to strict scrutiny.

In contrast, casenotes 1-2 of *Meadows v. Odom*, 360 F.Supp.2d 811 (M.D.La. 2005) held:

"1. The right to pursue the 'common occupations of life' is a protected liberty interest, subject to reasonable limitations."

"2. State legislatures may choose which industries, professions, or occupations require regulation and to what degree they should be regulated within each industry, profession, or occupation, without violating the Equal Protection Clause." (emphasis added)

FIFTH ASSIGNMENT OF ERROR

Respondent's denial of the right to vote in reliance on ORS 222.750 violates sections 1 and 2 of Article II of the Oregon Constitution.

Argument

Preservation of Error

Respondent's adherence to the state and federal constitution in the appeal at bar is jurisdictional, hence a constitutional issue may be raised for the first time on appeal.

Respondent forcibly annexed the unincorporated territories at issue without allowing residents and property owners to vote on whether they supported annexation, in reliance on the following "without the consent" option of ORS 222.750:

" * * * annexation by a city under this section shall be by ordinance or resolution, subject to referendum, with or without the consent of any owner of property within the territory or resident in the territory." (emphasis added)

Oregon Constitution, Article II, section 1, provides:

"All elections shall be free and equal."

Oregon Constitution, Article II, section 2 provides in relevant part:

"(1) Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen:

"(a) Is 18 years of age or older;

"(b) Has resided in this state during the six months immediately preceding the election * * * and;

"(c) Is registered not less than 20 calendar days immediately preceding any election in the manner provided by law.

"(2) Except as otherwise provided in section 6, Article VIII of this Constitution with respect to the qualifications of voters in all school district elections, provision may be made by law to require that persons who vote upon questions of levying special taxes or issuing public bonds shall be taxpayers." (emphasis added)

State v. Campbell/Campf/Collins, 265 Or 82, 88, 506 P2d 773, 314 P2d 912

(1973) cited with approval an earlier election law case for the following rule:

"Such legislation, however, must be reasonable, not curtailing the right or placing any undue burden upon its exercise': * * *. Nor may it 'hamper or render ineffective the power reserved by the people': * * *." (emphasis added)

The Court held at 265 Or 88-89:

However, not every legislative provision which tends to prevent fraud is necessarily valid. In *Woodward v. Barbur*, 59

Or 70, 116 P 101 (1911) and in *State ex rel Fleck v. Dalles City*, 72 Or 337, 3460347, 143 P 1127 (1914) it was held that municipal ordinances which restricted the right to sign petitions to registered voters were invalid because in conflict with the constitutional provision extending the right of initiative to the 'legal voters of municipalities.'³ * * *." (emphasis added)

The case note of *State ex rel Chapman v. Appling*, 220 Or 41, 348 P.2d 759 (1960) summarized the case:

* * * The Supreme Court, Lusk, J., held that the constitutional amendment providing that members of legislature shall receive for their services a salary of \$600 per annum gives the legislature no power to enact statute increasing compensation for services to \$175 per month."

The Court held at 220 Or 70:

"We hold, therefore, that ORS 171.071 is unconstitutional and void. * * *"

State ex rel Chapman, supra, held at 220 Or 50:

"* * * A provision of the charter of the City of Portland which prohibited a person from voting in a municipal election who has not paid a road poll tax was in conflict with Section 2 of Article II of the constitution of this state, which prescribes the qualifications of voters of this state. * * *

It will be observed that the qualifications of voters are in affirmative, mandatory terms. The court said:

"The provision is by its terms expressly made applicable to all elections not otherwise provided by the constitution. * * *"

Peterkort v. County Zoning District, 211 Or 188, 195, 313 P2d 773, 314

P2d 912 (1957) held:

"* * * Article II, § 2, is unambiguous and its meaning clear and not open to construction.

"Our conclusion is that ORS 215.269 is unconstitutional as in conflict with Art II, § 2, of the Oregon Constitution, the election held pursuant to that statute was void, and the

³ "2 At the time these cases were decided, a citizen was not required to be registered in order to be a legal voter. Registration is now a constitutional requirement. * * *"
Section 2."

purported county zoning district has no validity. * * *

(emphasis added)

Veatch v. Cottage Grove, 133 Or 144, 145, 289 P2d 494 (1930) held:

" * * * the legislature can not pass an act in contravention of the constitution. The language quoted from said section 2 is plain and simple, and the legislature is without the power to limit voters to taxpayers where the charter of the city is involved * * * "

(emphasis added)

The Court held at 133 Or 146 that the legislature, by statute, cannot "prevent non-taxpaying citizens from voting."

"There is no pretense that the hundred non-taxpaying voters were disqualified in any other way than that they did not pay taxes. There is no claim that the election attacked in this action is 'otherwise provided for by this constitution.'"

(no paragraph)

Said article II, section 2, as amended says 'every citizen of the United States.' That language is broad enough to include non-taxpaying citizens and the legislature has not the power to prevent non-taxpaying citizens from voting." (Emphasis by Court)

Loe v. Britting, 132 Or 572, 578, 287 P 74 (1930) held in rejecting denial to vote on a bond issue:

" * * * The right to vote in this case, conferred by the constitution, is a political right which attaches to every qualified voter seeking to cast his ballot at a general or special election and a statute which denies that right is unconstitutional because denying an existing right. * * * " (emphasis added)

The Court held that a statute limiting the right to vote on a bond issue in the bond issuing district is unconstitutional as denying the right to vote.

Ladd v. Holmes, 40 Or 167, 178, 66 P 714 (1901) held:

"Article II, § 1, provides that all elections shall be free and equal. To be free means that the voter shall be left in the untrammelled exercise, whether by civil or military authority, of his right and privilege; that is to say, no impediment or restraint of any character shall be imposed upon him, either directly or indirectly, whereby he shall be hindered or prevented from

participation at the polls * * *. (emphasis added)

The city's responsive brief may claim there is no Oregon constitutional right to vote on annexation. The record is silent on whether either appellate court considered Oregon Constitution, Article II, sections 1 and 2.

However, Oregon Constitution, Article II, §§ 1 and 2, prevail when there is a conflict between the right to vote in general and the city's claim of no Oregon constitutional right to vote on annexation.

Therefore, the Board erred in affirming constitutionality of ORS 222.750.

SIXTH ASSIGNMENT OF ERROR

The appealed LUBA Order must be remanded because Respondent's Comprehensive Plan lacks annexation criteria and Respondent did not rule on whether the annexation complied with Statewide Goals.

Argument

Preservation of Error

App 2. to this brief is page 2 of appellant Kane's December 17, 2005 post-hearing written testimony. It is identified as "00084" of Respondent's record submission to LUBA. The last paragraph of App. 2 preserves Respondent's error:

"Beaverton violated (ORS) 197.175(1) because the city did not consider Land Use and Development (LCD) statewide development goals."

Cape v. City of Beaverton, 187 Or App 463, 470, 683 P3d 261 (2003) held:

"Reduced to its simplest terms, the fact that the city's plan does not address the annexation of this property means that, under OAR 660-001-0310, the annexation cannot be considered to be in compliance with the goals.

(no paragraph)

The result of that lack of compliance is that the annexation is subject to the goals. (emphasis added)

9

From: Jim Wolf
To: Morgan Tracy
Date: 8/16/2005 3:58:43 PM
Subject: Police Services For Proposed Annexation Areas

Morgan,

At this time, Tigard Police has adequate resources to provide police services to the areas that are being proposed for annexation into the City of Tigard. My information indicates the areas of discussion include Wilson Ridge, Mountain View Estates, Arlington Heights III and the Summit Ridge area including the Alberta Rider School.

If you need any further clarification or comments, please contact me.

Thank you.

Jim Wolf
Public Information Officer
Tigard Police Department
13125 SW Hall Blvd
Tigard OR 97223

503.718.2561 office/voice
503.795.2391 (pager)
503.718.2645 (fax)
503.519.6804(mobile)

CC: Bill Dickinson

10

From: Bill Dickinson
To: Morgan Tracy
Date: 8/16/2005 4:41:07 PM
Subject: annexation area

Morgan,

As a supplement to Jim Wolf's response to you, I would point out that annexation and full development of these properties not only would be of minimal impact to Tigard Police, the new residents would enjoy a staffing level which is higher than what they would receive if they were unincorporated area residents. The Tigard Police Department is much more impacted by current in-fill development inside the city limits than by this small annexation area. Hope this is helpful.

Bill Dickinson, Chief
Tigard PD

11

From: "Lisa Hamilton-Treick" <Lisa@HamiltonRealtyGroup.com>
To: "Cathy Wheatley" <CATHY@ci.tigard.or.us>
Date: 8/16/2005 4:55:44 PM
Subject: Written Testimony on Bull Mountain Annexations

Re: Annexation of Albert Rider Elementary School, Portions of Summit Ridge, Arlington Heights III, and Wilson Ridge

Please add the following written comments, along with the oral testimony of Lisa Hamilton-Treick on 8/9/2005, to the public record. We are commenting as public citizens and residents of unincorporated Washington County.

Mayor and Council Members,

We oppose the combined public hearing process for the above annexations as it causes undue hardship on residents who may wish to challenge the land use decisions under a LUBA appeal. It forces all four annexations to be addressed during the same 21 day deadline period and burdens the public with unnecessary expense. The decision to handle the public hearing for all four properties at the same time is acknowledged as "an experiment" by city staff.

We oppose the creation of highly irregular boundaries and intentional formation of "islands" and "pockets" of unincorporated neighborhoods. This process significantly contributes to a confusing service boundary, especially as it relates to the three local and overlapping police/sheriff's service boundaries. This is in direct violation of Tigard's annexation codes and ordinances. It is done so with the admitted plan to eventually fill in and align the boundaries, but with no process or timeline as to how and when that would, if ever, be accomplished.

We oppose the transfer of Traffic Impact Fees collected in the Urban Services Area (per 2002 IGA) to Tigard's TIF accounts. Per the Tigard/Washington County IGA, the funds collected in the area defined by the map are to be accounted for separately in the Urban Services TIF accounts.

We oppose the use of force to secure consent to annex in exchange for building permits. When negotiating the sale of their property, it is common practice for a buyer/builder/developer to require the seller to agree, as part of the purchase agreement, to sign any and all documents required by the city to allow the purchaser to proceed with the pre-application and application process. If, as part of that process, the City of Tigard requires the buyer/builder/developer to consent to annex in exchange for building permits, the city will jeopardize the sale unless the seller consents. If property owners were acting on their own free will it is highly likely the number of consents would be closer to 8% to 10%, reflecting the results of the November, 2004 election, rather than the 100% seller consent the city has stated.

Thank you for giving our comments your serious consideration.

Regards,

Tom Treick and Lisa Hamilton-Treick
13565 SW Beef Bend Rd.
Unincorporated Bull Mountain
Tigard, OR 97224

CC: <ttreick@comcast.net>

12

From: "phil decker" <pd-law@comcast.net>
To: "Tigard Mayor, City Council" <council@ci.tigard.or.us>
Date: 8/16/2005 4:37:27 PM
Subject: City Council Meeting, 8/9/05: Objection to Annexation of Four Parcels, and each of them

Hon. Mayor and Council Members:

I am Philip E. Decker and reside at 14540 SW 148th Place, Tigard, OR 97224.

This communication is to OPPOSE and OBJECT to the annexation to the parcels, and each of them individually (hereinafter collectively 'parcels'), identified in Item 7 of the Tigard City Council Meeting Agenda of August 9, 2005.

Grounds for said opposition and objection include, without limit, the following:

1. Both the City of Tigard and said parcels are regulated by and subject to ORS 222.111, et seq, as to annexation of real property to the City of Tigard;
2. Said parcels are not 'contiguous' as required by ORS 222.111, et seq.;
3. ORS 222.115 (Annexation contracts) is ensconced entirely within the statutory framework of ORS 222.111, et seq., which requires the parcel(s) be "contiguous to the city," and provides no exemption directly or indirectly to the overarching statutory requirement that parcels proposed for annexation be contiguous to the city;
4. The requirement by the City of Tigard that the parcel owner(s) or representative(s) consent in writing to annexation of said parcel(s) as a condition of issuance of necessary building and related permits by the City of Tigard is unlawful, unauthorized by applicable Oregon, impermissibly coercive, an abuse of the police power of the City of Tigard, a taking of property without due process of law and a conscious, intentional and unlawful attempt to create "de facto annexations" to the City of Tigard in order to avoid and circumvent Oregon laws applicable to annexations;
5. Each of the subject parcels is irregularly shaped; annexation of any of the subject parcels will create islands and pockets of annexed territory in violation of law, including without limit City of Tigard policy and ordinance;
6. The irregularly shaped parcels which are the subject of the instant annexation proposal, or some of them, are proposed for annexation to recently 'annexed' parcels which were themselves annexed in violation of law, including without limit City of Tigard policy and ordinance, by virtue of their irregular shapes and resulting creation of impermissible islands and pockets.

Thank you.

Philip E. Decker

Annexation Responses from Staff

In response to a number of questions that were raised at the August 9, 2005 City Council Hearing, staff has prepared the following responses. These are to be read in conjunction with the attached findings prepared by legal counsel.

Charles Radley

How appropriate are conditions of approval on development to require annexation?

The City Attorney has prepared findings that address this issue. See attached findings section numbers 4 and 5.

What is the nexus? Why does the landowner need to annex?

The City Attorney has prepared findings that address this issue. See attached findings section number 11.

Julie Russell

Why is this hearing being conducted differently?

There are 4 annexations being processed concurrently. Instead of sending four sets of notices to property owners resulting in duplication of some notices and some properties not being notified of the other annexation proposals, a combined notice and hearing process was instituted. This saved \$132 in postage, resources in paper (382 notices versus 561), and staff time in preparing the notice.

As for the conduct of the hearing, there is no difference. The applications are introduced and summarized by staff, and opportunities to comment on one or all applications is offered. Council will take separate actions on each annexation proposal. The intention was to make it easier for citizens to participate in the process.

How does this affect the LUBA process?

It doesn't. The same appeal procedures apply for each of the four separate applications.

Concerns about the conditional use permit.

The conditional use permit was approved August 10, 2004 with a 10 day appeal period. The case was appealed by a private developer but the appeal was dropped before the hearing commenced. Therefore, the decision became legal and binding on August 24, 2004. Raising a claim of the validity of a condition at this time is invalid. The applicant has been aware of the requirement to annex since the preapplication conference was held for the school July 8, 2003. The school had numerous opportunities to challenge the requirement and chose not to. The standard practice is to require annexation prior

to commencing construction, but in the interest of facilitating the construction of the school, staff agreed to defer the annexation requirement until final building inspection.

Map seems incorrect. It shows Bull Mountain Road being annexed.

The vicinity map included with the notice is not the official annexation boundary map that is used to record the annexation. It is only intended to identify the affected parcels, and the generalized location of the proposed boundary change. This map is not sufficient to record an annexation with the Department of Revenue and other state and regional agencies. These agencies rely on tax assessor maps and legal descriptions, which are contained in each of the four annexation application files.

Portions of Bull Mountain Road will be annexed. Beef Bend Road will not be a part of these annexations.

Disputes findings of Comp Plan #2.1.1 – “that COT notified every property owner affected by the annexations...”

Policy 2.1.1 requires that: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

The findings from the staff report state: “Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the approval of the subdivision request.”

The City Attorney has expounded on this issue in the attached findings, number 12.

Disputes findings of Policy 1.2- these annexations create irregular boundaries and create islands. Council in the past has said they would not annex to create islands.

We assume that it is policy 10.1.2 that is being disputed. This policy requires: “approval of proposed annexations of land by the City shall be based on findings with respect to the following: the annexation eliminates an existing “pocket” or “island” of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the City boundary; the annexation can be accommodated by the services listed in 10.1.1(a).”

There is nothing in this policy that prevents the creation of islands, only that elimination of islands is encouraged. The council’s statement regarding islands is misrepresented:

the City will not annex rights of way simply to create islands for later annexation. This is generally referred to as cherry stem annexations. That is not what is occurring here. There are distinct parcels being annexed and the rights of way that have been included are immediately fronting the annexed parcel. There is nothing to prevent Tigard from annexing up to the centerline of Beef Bend Road along Mountain View Estates and Arlington Heights 3, but to remain consistent with the previous annexation of Bella Vista, this right of way was excluded.

Any incremental annexation of parcels will have a boundary that is not "square" but that does not make them irregular. The annexation boundaries either incorporate the entire parcel (making police response easy to determine whether the parcel is within or outside the City) or excludes a particular address (as in the case of Mrs. Rider. Nevertheless, with the intergovernmental agreement for police services, both the county and the City will respond to incidents in the Bull Mountain area, depending on who is closest to the incident at the time.

The City Attorney has expounded on this issue in the attached findings, number 9.

Disputes 18.320.020. identified as a very park deficient area. More homes will increase the deficiency. Also, 99W is already at capacity – additional building will overload that.

The identified services are water, sewer, drainage, streets, police, and fire protection. Park deficiencies are not required to be considered with annexations. Also, 99W is not at capacity. Tigard's TSP shows that there are no roads at service levels of F (failing). It is projected that by 2015 without constructing certain mitigating facilities and improvements, portions of 99W will reach unacceptable levels of service. This is not the case now and a model projection cannot be used as a basis to reject an annexation request that roadway capacity is not (or someday will not be) available.

Was Washington County Sheriffs office notified? What are their comments?

All notices of annexation are sent to the Washington County Department of Land Use and Transportation. No comments were received.

Bull Mt. Community Plan identifies Bull Mountain area as R-6. How was Summit Ridge developed at R-7 prior to annexation?

Ordinance 487, adopted by the Washington County Board of Supervisors on September 9, 1996 applied the most equivalent zoning designation to the R-6 areas (not all parts of Bull Mountain are identified as R-6 in the plan). The R-7 zone is the most equivalent City designation per the table identified in the ordinance (and repeated in the Development Code section 18.320)

Why was Alberta Rider and Summit Ridge annexed together?

Unlike the other three annexation requests, these two annexations were initiated by the City utilizing consent forms. Since they are contiguous areas, the two were combined into one application. They could have been separated, but this would have served no purpose, other than making additional work (creating another casefile, generating another staff report).

How can Arlington Heights #3 annex into our homeowner's association and not have a double majority vote like the property owners who already live in that subdivision?

This is not a function of local government, and the procedure for adding lots into an HOA is an entirely separate process. The HOA is a private legal entity bound by the covenants that apply to the properties within a subdivision. Whether or not other lots can be added to an HOA and the process for doing such should be spelled out in the bylaws for the association.

Scott Miller

Why doesn't the City get the message about annexing Bull Mountain? Does the City of Tigard have a plan to continue to annex on Bull Mountain?

The City has had a long term policy that unincorporated areas within the City's area of interest (Bull Mountain, Metzger, etc.) should ultimately be served by the City. This was established with the adoption of Tigard's Comprehensive Plan in 1983 and acknowledged by Washington County through a series of intergovernmental agreements.

County 2000, Washington County's Strategic Plan, recognizes that cities are the best providers on municipal levels of urban services. County 2010, an update of County 2000, continues this policy direction.

Based upon the policy direction that has been in place since the adoption of the City's Comprehensive Plan, Tigard continues its policy of annexation. Annexation requests are received throughout the year.

In light of City and County policy, the City Council placed an annexation ballot on the November 2004 election. This ballot asked the voters of the City as well as voters of unincorporated Bull Mountain whether unincorporated Bull Mountain should be annexed into the City all at once. While the annexation of unincorporated Bull Mountain was not supported by 88.62% (4,199) of the voters in unincorporated Bull Mountain, a 64.71% (13,294) majority of Tigard voters supported the annexation. Tigard voters support annexation of unincorporated Bull Mountain.

What do any of us on Bull Mountain get for our tax dollars?

The Bull Mountain Annexation Plan, Bull Mountain Public Facilities and Services Assessment Report, and the Bull Mountain Annexation Study answer that question. Copies are available at the Tigard Public Library and on the City's web page – www.ci.tigard.or.us.

Bull Mountain does not have parks yet qualifies for one. Will the City of Tigard provide one?

Tigard's Parks Master Plan identifies existing and future park needs for the City's entire area of interest, including unincorporated Bull Mountain. The City is formalizing criteria for park purchases, including areas outside the current City limits. It should be noted that the City, along with Washington County, purchased approximately 12 acres outside the City limits for open space.

How can owners give consent unless no option?

The owners gave consent. The testimony by the owners was that consent was voluntary.

Lisa Hamilton-Treick

What is the City taking in? Wants to see current map of the unincorporated area of Bull Mountain including all of Bull Mountain and Beef Bend Road that demonstrate where the City's jurisdiction begins and ends.

The annexation boundaries are clearly shown in the tax assessor's maps which have been available in the application file since date of application. These maps are now available on line at

http://www.ci.tigard.or.us/city_hall/city_council/docs/packets/050809Packet.pdf

A minor adjustment in the proposed annexation area was introduced at the August 9th hearing to exclude Ms. Rider's life tenancy area. This map was made available at that hearing.

The City's GIS (Geographic Information System) coordinator position has been vacant since January and, as a result, the present zoning and comprehensive plan map has not been able to be updated and is out of date. As such, it does not reflect the recent annexation of Alpine View, Bella Vista, Arbor Summit, and portions of Summit Ridge. Updates to this map are scheduled to occur as soon as a new staff GIS person is hired.

Ken Henshel

Cannot find in any of the IGA's that gives City of Tigard authority to force governments on an area as a precondition to approving building or occupancy permits. These annexations are unconstitutional takings as they are coerced.

The County and City IGA recognizes that Tigard is the ultimate service provider of urban services in the Bull Mountain Planning Area. As development of those parcels further intensifies the use and demand for those services, there is a rational nexus to require the properties to be included within the corporate limits of the City that provides and maintains those services. Since there is no physical "taking" of property, that is dedication of real property interests for public use that is required by bringing the property into the City limits, there is no requirement to determine rough proportionality of the condition requiring the annexation.

Agenda Item: 7Hearing Date: August 9, 2005 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**

**SECTION I. APPLICATION SUMMARY**

FILE NAME: MOUNTAIN VIEW ESTATES ANNEXATION
CASE NO.: Zone Change Annexation (ZCA) ZCA2004-00004

AGENT: Lan Pacific **APPLICANT:** Sean Foushee
 Attn: Brian Keefer Accent Homes
 1001 SE Water Ave., #360 12583 SW Autumnview St
 Portland, OR 97214 Tigard, OR 97223

OWNERS: Dwight C. and Karla Minthorne Richard and Diane M. Wright
 12415 SW Beef Bend Road 15350 SW Beef Bend Rd
 Tigard, OR 97224 Tigard, OR 97224

PROPOSAL: The applicant applied for approval to subdivide property on Beef Bend Road, known as Mountain View Estates. The subdivision's approval included a condition of approval requiring annexation. The applicant has applied for annexation of 6.94 acres.

**CURRENT
ZONING
DESIGNATION:** R-7, Medium Density Residential.

**EQUIVALENT CITY
ZONING
DESIGNATION:** R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: 12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500.
 No Site Address, WCTM 2S110CB, Tax Lot 100.

**APPLICABLE
REVIEW
CRITERIA:** Community Development Code Chapters 18.320 and 18.390;
 Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and
 ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:

Lan Pacific, representing Accent Homes applied for approval to subdivide property on Beef Bend Road, known as Mountain View Estates. A condition of that subdivision approval required annexation prior to recording the final plat. Accordingly, the applicant applied for annexation of the two parcels that comprised the subdivision. The total area represented is 6.94 acres and is contiguous to the present city limits along the northern property boundary.

Vicinity Information:

The subject parcels are located north of SW Beef Bend Road, south of Thornwood subdivision, and west of Turnagain Heights.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the approval of the subdivision request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. The subject parcels are part of a subdivision that was reviewed and approved based on the availability of public services. Services to the subject parcels have been addressed and conditioned within the review of the Mountain View Estates subdivision approval. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D.'s were required for the subject parcels or subdivision approvals. All public infrastructure listed above have been conditioned to be constructed and the costs are to be borne by the applicant.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Mountain View Estates. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code

Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services was reviewed as part of the Mountain View Estates subdivision approval. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. Ordinance provisions were addressed during the individual reviews of the Mountain View Estates subdivision. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

**TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS**

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

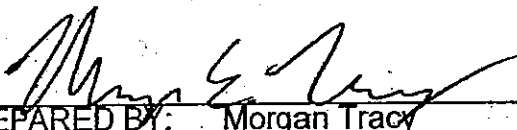
Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2004-00004 - MOUNTAIN VIEW ESTATES ANNEXATION.


PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE


APPROVED BY: Richard Bewersdorff
Planning Manager

July 28, 2005
DATE

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2004-00003 – Mountain View Estates

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. There is one owner of the two properties that are in the territory proposed for annexation under ZCA2004-00003. The owner has consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.
2. According to County voter registration information, there are no current registered voters residing in the territory to be annexed under ZCA2004-00003. The City had received signed consents to annexation to the City of Tigard from all four previous registered voters.
3. Because the City has written consent of all owners of land and there are no currently registered voters in the territory proposed to be annexed under ZCA2004-00003, the City may proceed with annexation of that territory without a vote in the territory to be annexed, pursuant to ORS 222.125, because it has the consent of all owners and there are no electors.

CITY ATTORNEY FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

Issues Raised By More Than One Person

HB 2484

1. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in the area to be annexed. House Bill 2484 is a very simple bill. It amends ORS 195.215, to make it clear that annexation plans under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.
 - A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.
 - B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

2. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.
 - A. HB 2722 does not apply to annexations.
 - B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be

annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

3. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.
 - A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.
 - B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.
 - C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.
 - D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

4. A few persons argued that the consents are not valid because they were coerced.
 - A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, and Al Jeck) testified that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation. If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council concludes that none of the consents were coerced.
 - B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

- C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

5. Some opponents have argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.
- A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.
- B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

6. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.
- A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.
- B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

7. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.
- A. A "double majority" vote is or will be required for annexation plans under ORS

Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

- B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

- 8. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.
 - A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that the boundaries are not irregular to the extent they create confusion in the provision of police services.
 - B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

- 9. Several persons commented that the annexations will not result in a regular boundary.
 - A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on

findings with respect to the following:

- a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or
 - b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;
 - c. The police department has commented on the annexation;
 - d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;
 - e. The annexation can be accommodated by the services listed in 10.1.1(a).
- B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

10. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.
 - A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.
 - B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

11. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

- A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.
- B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.
- C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.
- D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

- 12. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.
 - A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City.
 - B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is

not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

- A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.
- B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:
 - 1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
 - 2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.
- C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.
- D. Conversion table. Table 320.1 summarizes the conversion of the

County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate.

- D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

- 13. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.

- A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.
- B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

- 14. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.

- A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these

annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tomi Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

15. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.
 - A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.
 - B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority over the area to be annexed. Land use authority includes the authority to impose conditions.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

16. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1. and 10.1.2, and CDC 18.320.020. The above findings address those arguments.
17. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.
18. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.
19. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers

in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

20. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.
21. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.
22. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.
23. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not relate to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority to annex. Ms Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

24. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kisling

25. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

26. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

27. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four

annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

28. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.
29. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

30. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.
31. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an annexation contract is signed. One purpose of ORS 222 is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.
32. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.
33. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

34. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 6.94 ACRES, APPROVING MOUNTAIN VIEW ESTATES ANNEXATION (ZCA2004-00004), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of two (2) parcels of land consisting of 6.94 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "City Attorney Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

Craig Dirksen, Mayor

Approved as to form:

City Attorney

Date

Mountain View Estates
ZCA2004-00004

Legal Description for Annexation

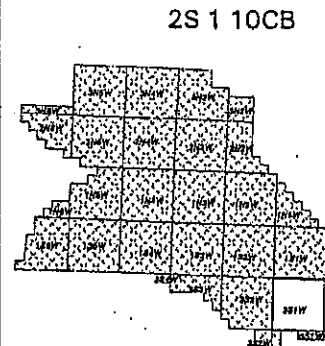
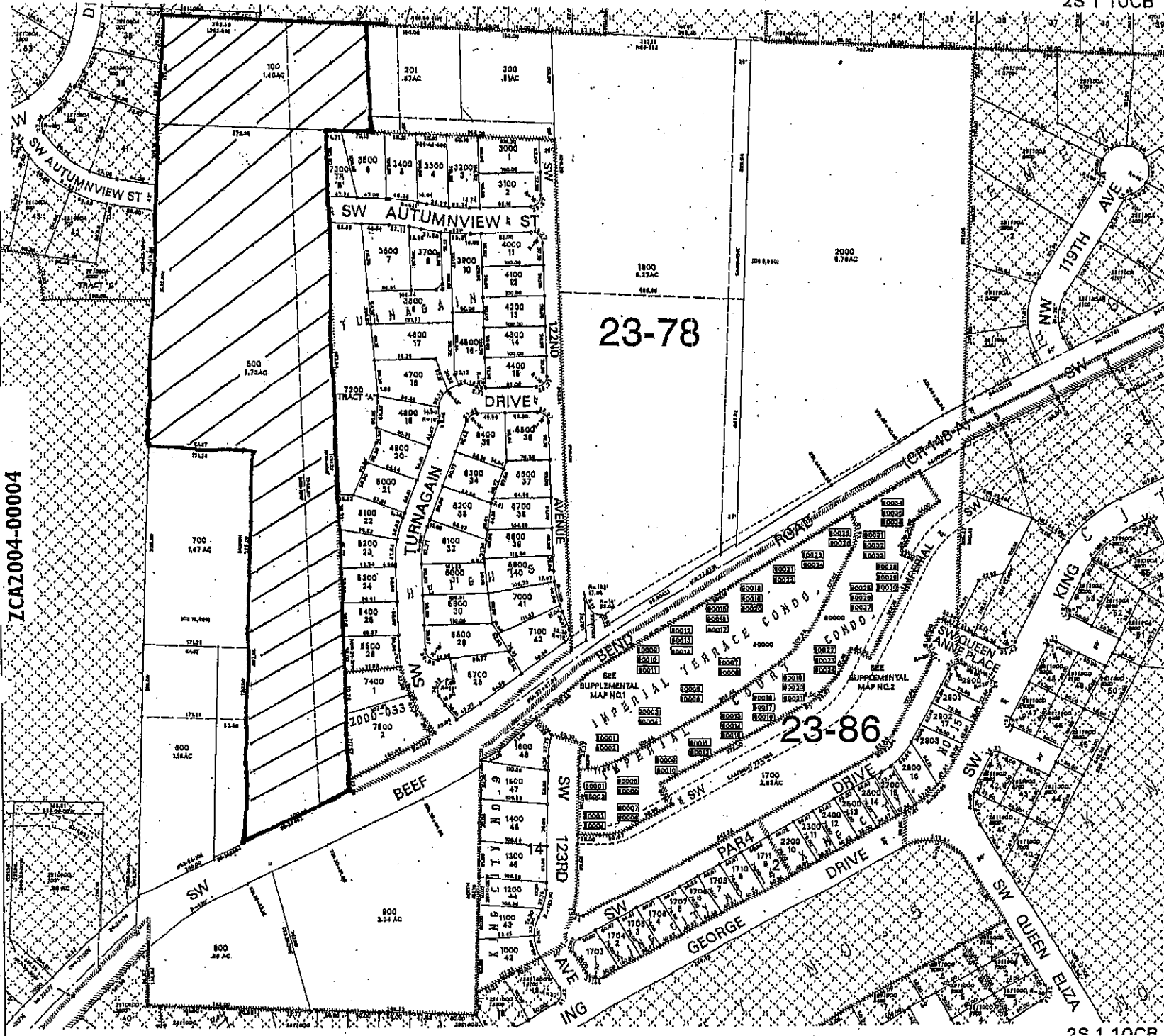
COMBINED TAX LOTS 2S110CB-00100 and 2S110CB-00500

Owners: Dwight C. Minthorne and Karla Minthorne (T.L. 500)
Owners: Richard R. Wright and Diane M. Wright (T.L. 100)

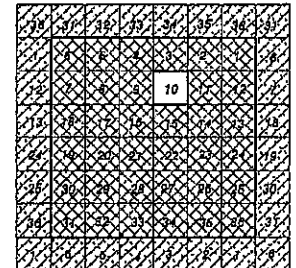
A tract of land in Section 10, Township 2 South, Range 1 West of the Willamette Meridian in Washington County, State of Oregon and being more particularly described as follows:

Commencing at the West quarter corner of Section 10, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington, State of Oregon, said point also being the Initial Point; thence, South $89^{\circ}58'17''$ E a distance of 333.50 feet along the South line of "Thornwood", a recorded subdivision in Washington County Survey Records; thence, South $03^{\circ}15'00''$ East a distance of 175.10 feet along the West line of that tract of land described in Document Number 99111751, Washington County Deed Records to the North line of "Turnagain Heights", a recorded subdivision in Washington County Survey Records; thence, North $89^{\circ}55'03''$ West a distance of 70.73 feet along the North line of said "Turnagain Heights" to the Northwest corner of said subdivision; thence, South $03^{\circ}30'35''$ East a distance of 1076.57 feet along the West line of said "Turnagain Heights" to the North line of S.W. Beef Bend Road, County Road Number A-148; thence, along said North line, along a curve to the left having a radius of 1467.00 feet through a central angle of $00^{\circ}50'44''$, the long chord of which bears S $61^{\circ}57'56''$ W a distance of 21.65 feet; thence, along said line, South $62^{\circ}23'18''$ West a distance of 161.60 feet along said North line; thence, along said North line, along a curve to the right having a radius of 858.00 feet through a central angle of $00^{\circ}22'39''$, the long chord bears South $62^{\circ}11'59''$ West a distance of 5.65 feet to the West line of that tract of land described in Document Number 78044753, Washington County Deed Records; thence, North a distance of 629.34 feet along said West line to the Northeast corner of said tract of land; thence, West a distance of 171.29 feet along the North line of said tract of land to the East line of that tract of land described in Document Number 2004-032242, Washington County Deed Records; thence, North a distance of 707.80 feet along the East line of said tract of land and the East line of "Arlington Heights No. 2", a recorded subdivision in Washington County Survey Records to the Initial Point.

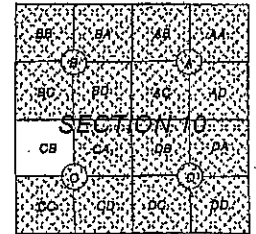
Contains 302,171 square feet, 6.94 acres, more or less.



WASHINGTON COUNTY OREGON
NW 1/4 SW 1/4 SECTION 10 T2S R1W W.M.
SCALE 1" = 100'

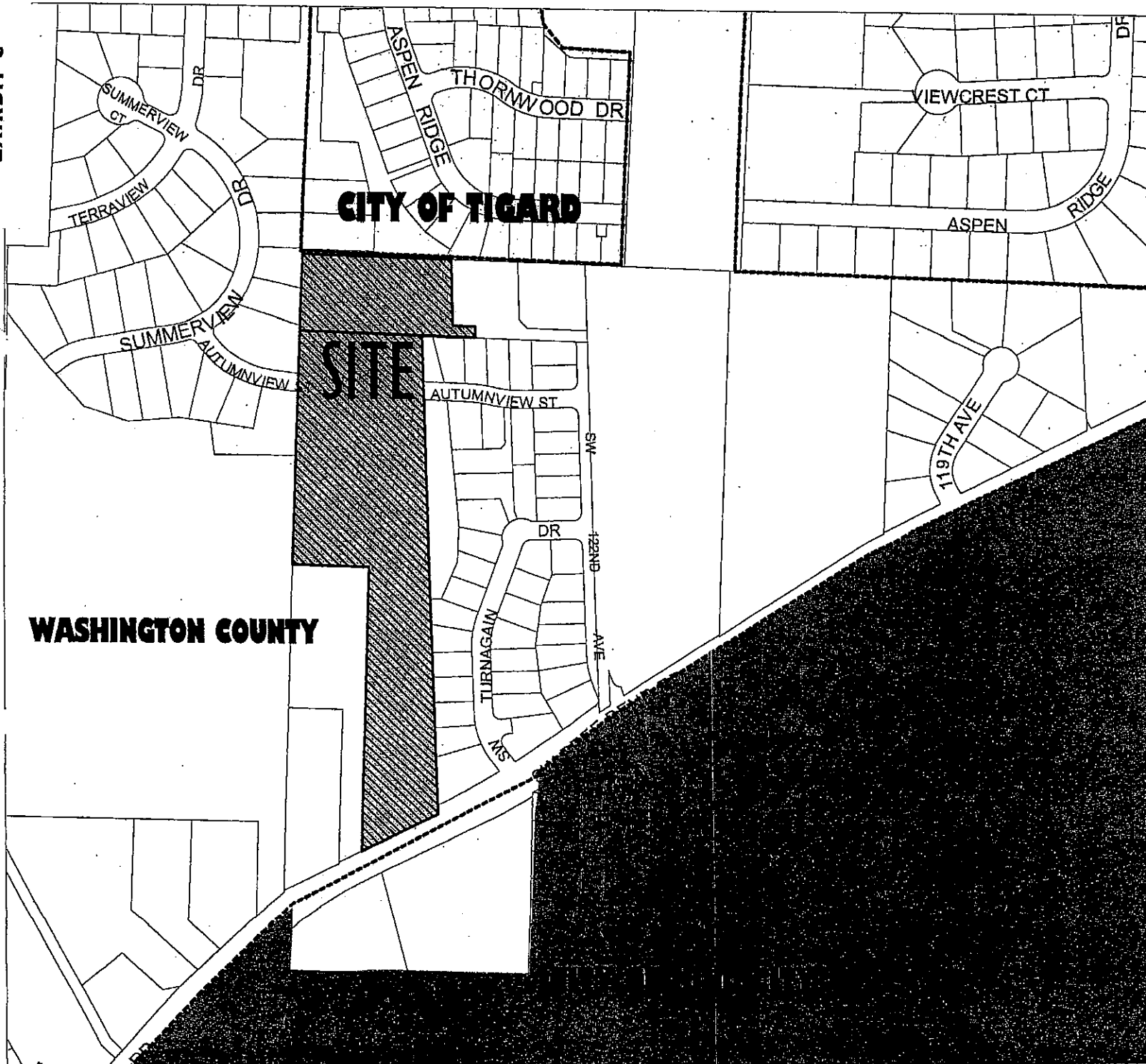


FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us



Cancelled Taxlots For: 2S110CB

1701, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 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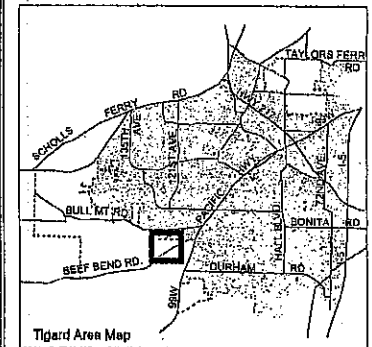
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

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ZCA2004-00004
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MOUNTAIN VIEW ESTATES SUBDIVISION ANNEXATION



0 100 200 300 400 Feet
1"= 312 feet



Information on this map is for general location only and should be verified with the Development Services Division.
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>

Agenda Item: 7Hearing Date: August 9, 2005 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



CITY OF TIGARD

Community Development

Shaping A Better Community

SECTION I. APPLICATION SUMMARY

FILE NAME: ARLINGTON HEIGHTS 3 ANNEXATION
CASE NO.: Zone Change Annexation (ZCA) ZCA2005-00001

OWNERS: Matrix Development Corp. Richard And Betty Simerson
 12755 SW 69th Avenue, Ste #100 12455 SW Beef Bend Rd
 Tigard, OR 97223 Tigard, OR 97223
 Walling, Roger/Jacqueline
 12475 SW Beef Bend Road
 Tigard, OR 97224

PROPOSAL: The applicant has applied for annexation of 16.97 acres into the City of Tigard.

CURRENT ZONING DESIGNATION: R-7, Medium Density Residential.

EQUIVALENT CITY ZONING DESIGNATION: R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: WCTM.2S109DA Tax Lot 2100; and 2S110CB Tax Lots 600 and 700.

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:

The applicant/owner, Matrix Development, has applied for subdivision review, but that application has not completed its review at the time of this report. The subdivision is tentatively named Arlington Heights 3. A standard condition of approval for subdivision proposals on property that borders City limits within the Urban Services Intergovernmental Agreement area is that the property annex prior to final plat approval. There is no requirement that an applicant or property owner wait until receiving land use approval to annex the property. A parcel that is contiguous to the city limits may apply for annexation at any time. The total area represented in this annexation request is 16.97 acres and is contiguous to the present city limits along the western property boundary.

Vicinity Information:

The subject parcels are located north of SW Beef Bend Road, south of Arlington Heights 1 and 2, and east of Summit Ridge subdivision.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the approval of the subdivision request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. While the subdivision request has not completed its review, staff finds that there are three roads stubbed to the parcel, an 8" water line stubbed to the site, an 8" CWS sewer line along the east boundary, and drainage on the site is presently provided by two natural drainageways. Before the land is developed at its designated capacity of 7 units to the

gross acre, the subdivision review will require that adequate facilities are available and upsized if necessary to handle the development. By providing this infrastructure, the site will have adequate service capacity. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D's have been required with the subject parcels or subdivision approval. All public infrastructure listed above will have to be completed before the land is subdivided by a subdivision plat. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no nonremonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Arlington Heights Phase 3. All future lots within this phase of the subdivision will be inside city limits. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code

Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential development will be reviewed and conditioned as necessary as part of the Arlington Heights 3 subdivision review. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions will be addressed at the time the property develops. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

**TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS**

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	CP Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
CG General Commercial	CG General Commercial	CG General Commercial
IND Industrial	IL Light Industrial	Light Industrial

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

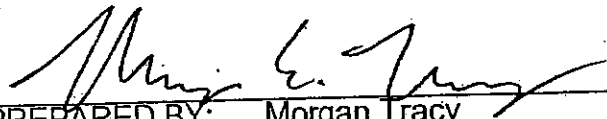
Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

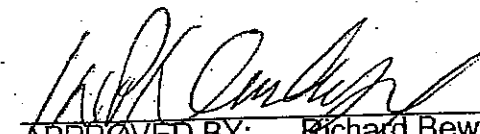
SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00001 - ARLINGTON HEIGHTS 3 ANNEXATION.


PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE


APPROVED BY: Richard Bewersdorff
Planning Manager

July 28, 2005
DATE

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2005-00001 – Arlington Heights 3

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. There are five owners of the three properties in the territory proposed for annexation under ZCA2005-00001 have consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.
2. According to County voter registration information, there are four registered voters residing in the territory to be annexed under ZCA2005-00001. The City has received signed consents to annexation to the City of Tigard from all four registered voters. Therefore, the City has received consents from a majority of the electors in the territory to be annexed under ZCA2005-00001.
3. Because the City has written consent of all owners of land and the majority of the voters in the territory proposed to be annexed under ZCA2005-00001, the City may proceed with annexation of that territory without a vote in the territory to be annexed, pursuant to ORS 222.125.

CITY ATTORNEY FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

Issues Raised By More Than One Person

HB 2484

1. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in the area to be annexed. House Bill 2484 is a very simple bill. It amends ORS 195.215, to make it clear that annexation plans under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.
 - A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.
 - B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

2. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.
 - A. HB 2722 does not apply to annexations.
 - B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be

annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

3. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.
 - A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.
 - B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.
 - C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.
 - D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

4. A few persons argued that the consents are not valid because they were coerced.
 - A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, and Al Jeck) testified that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation. If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council concludes that none of the consents were coerced.
 - B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

- C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

5. Some opponents have argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.
- A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.
- B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

6. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.
- A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.
- B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

7. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.
- A. A "double majority" vote is or will be required for annexation plans under ORS

Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

- B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

- 8. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.
 - A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that the boundaries are not irregular to the extent they create confusion in the provision of police services.
 - B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

- 9. Several persons commented that the annexations will not result in a regular boundary.
 - A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on

findings with respect to the following:

- a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or
 - b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;
 - c. The police department has commented on the annexation;
 - d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;
 - e. The annexation can be accommodated by the services listed in 10.1.1(a).
- B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

10. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.
 - A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.
 - B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

11. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

- A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.
- B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.
- C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.
- D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

- 12. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.
 - A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City.
 - B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is

not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

- A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.
- B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:
 - 1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
 - 2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.
- C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.
- D. Conversion table. Table 320.1 summarizes the conversion of the

County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate.

- D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

- 13. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.
 - A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.
 - B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

- 14. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.
 - A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these

annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tomi Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

15. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.
 - A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.
 - B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority over the area to be annexed. Land use authority includes the authority to impose conditions.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

16. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1. and 10.1.2, and CDC 18.320.020. The above findings address those arguments.
17. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.
18. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.
19. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers

in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

20. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.
21. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.
22. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.
23. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not relate to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority to annex. Ms. Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

24. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kislning

25. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

26. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

27. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four

annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

28. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.
29. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.*

Philip E. Decker

30. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.
31. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an annexation contract is signed. One purpose of ORS 222 is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.
32. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.
33. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

34. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 16.97 ACRES, APPROVING ARLINGTON HEIGHTS 3 ANNEXATION (ZCA2005-00001), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of three (3) parcels of land consisting of 16.97 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "City Attorney Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

Craig Dirksen, Mayor

Approved as to form:

City Attorney

Date

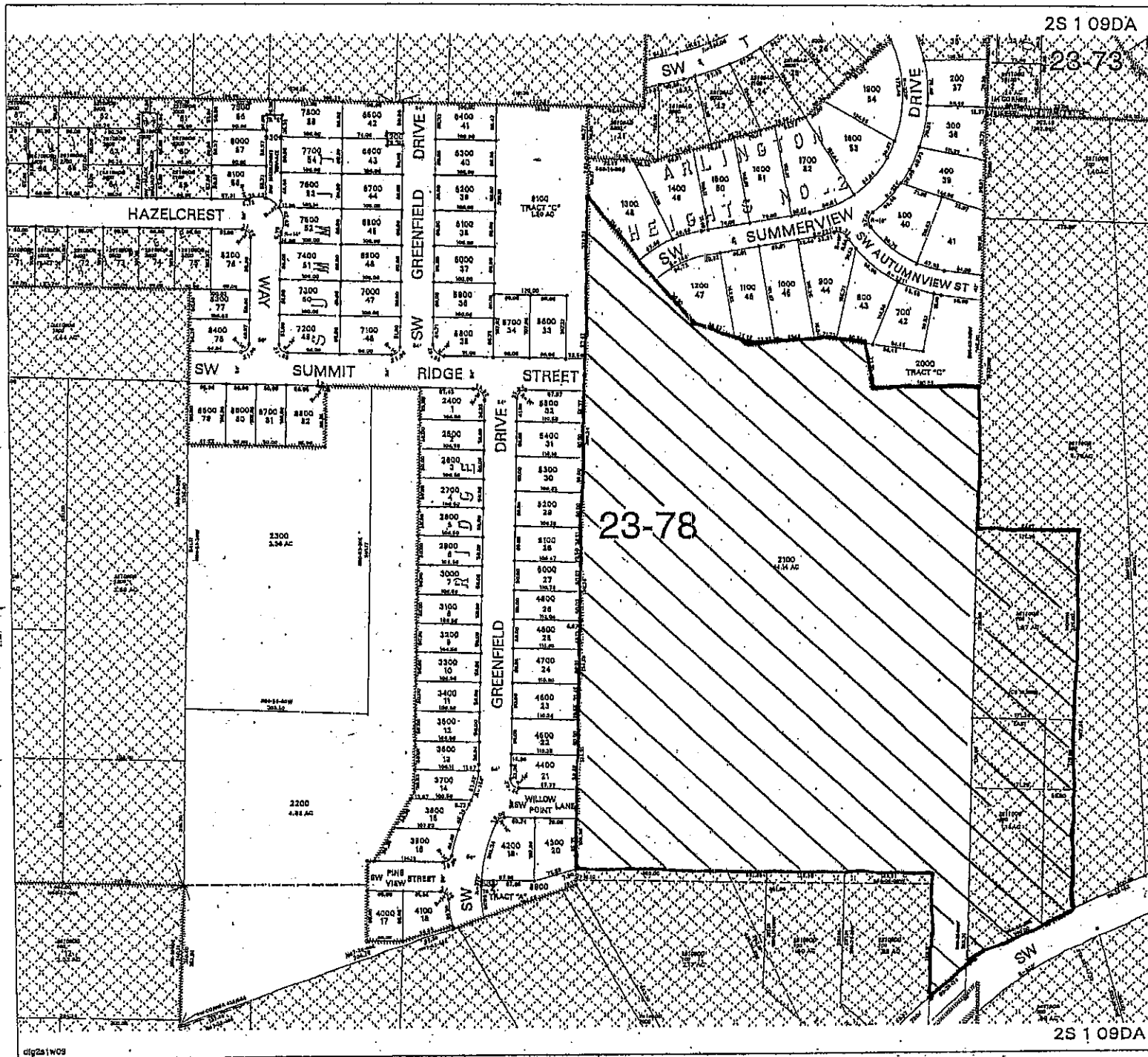
ORDINANCE NO. 2005-_____

ZCA2005-00001 Arlington Heights 3 Annexation

Arlington Heights 3
ZCA2005-00001

A tract of land situated in the Section 9 & 10, Township 2 South Range 1 West Willamette Meridian described as follows:

Beginning at the southeast corner of Tract "C" of the subdivision plat of Arlington Heights No. 2 which is on the east line of Section 9; thence S 01° 43' 36" W, along said east line, a distance of 248.13 feet; thence S 88° 16' 24" E, leaving said east line, a distance of 171.29 feet; thence S 01° 43' 36" W a distance of 629.34 feet to the north right of way of SW Beef Bend Road and a point on a non-tangent curve to the left; thence along said curve to the left with a radius of 858.00 feet, a central angle of 18° 45' 39" (a chord which bears S 54° 22' 14" W, 279.69 feet) and a length of 280.94 feet to a point of tangency; thence S 44° 59' 24" W, along said north right-of-way, a distance of 13.10 feet; thence N 01° 43' 36" E a distance of 217.45 feet; thence N 88° 59' 02" W a distance of 591.22 feet to the east line of Summit Ridge subdivision; thence N 02° 02' 19" E a distance of 109.42 feet; thence N 01° 28' 06" E a distance of 173.28 feet; thence N 02° 14' 47" E a distance of 134.59 feet; thence N 00° 00' 56" W a distance of 130.41 feet; thence N 01° 54' 35" E a distance of 389.30 feet; thence N 01° 11' 42" E a distance of 210.05 feet to the south line of Arlington Heights NO. 2; thence along said south line the following 7 courses; thence S 37° 29' 33" E a distance of 140.72 feet; thence S 41° 09' 15" E a distance of 134.27 feet; thence S 71° 02' 09" E a distance of 105.57 feet; thence N 84° 57' 06" E a distance of 113.51 feet; thence S 81° 44' 42" E a distance of 69.97 feet; thence S 07° 15' 19" E a distance of 73.53 feet; thence S 90° 00' 00" E distance of 180.00 feet to the point of beginning.



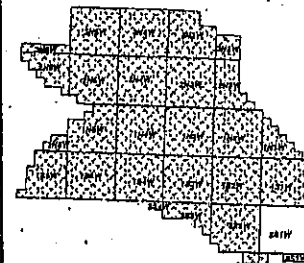
2S 1 09DA

23-73

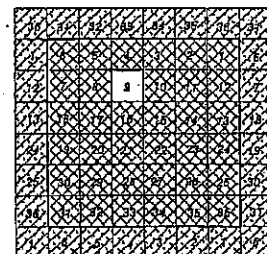
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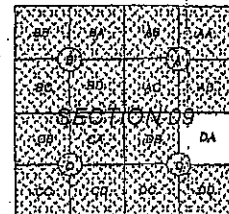
2S 1 09DA



WASHINGTON COUNTY OREGON
NE1/4 SE1/4 SECTION 09 T2S R1W W.M.
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us



Cancelled Taxlots For: 2S109DA
600,100,



PLOT DATE: January 20, 2005
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE
Map is derived by either a plat or a state-licensed
person and is for reference only and does not indicate the most
current property boundaries. The assessor is responsible for the
most current information.

2S 1 09DA



CITY of TIGARD
GEOGRAPHIC INFORMATION SYSTEM

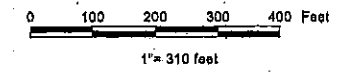
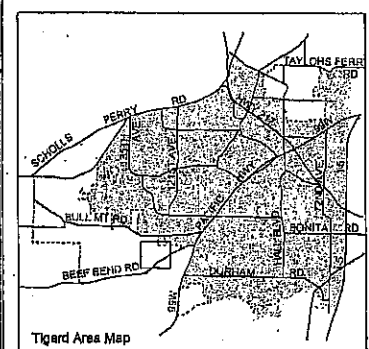
VICINITY MAP

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ZCA2005-00001

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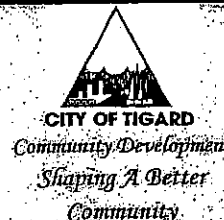
**ARLINGTON HEIGHTS 3
ANNEXATION**



Information on this map is for general location only and should be verified with the Development Services Division.
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>

Agenda Item: 7Hearing Date: August 9, 2005 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**

**SECTION I. APPLICATION SUMMARY**

FILE NAME: WILSON RIDGE ANNEXATION
CASE NO.: Zone Change Annexation (ZCA) ZCA2005-00002

AGENT: Alpha Community Development
 Attn: Jerry Palmer
 9600 SW Oak Street, Suite 230
 Portland, OR 97223

OWNER: Rickie and Linda Graham
 13400 SW Bull Mountain Rd
 Tigard, OR 97224

PROPOSAL: The applicant has applied for annexation of 2.68 acres into the City of Tigard.

CURRENT ZONING DESIGNATION: R-7, Medium Density Residential.

EQUIVALENT CITY ZONING DESIGNATION: R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: 13350 and 13400 SW Bull Mountain Road,
 WCTM 2S109AC, Tax Lots 100 and 200

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:

The applicant, Alpha Community Development, has applied for subdivision review for which a decision for approval is pending but has not yet become effective. The subdivision is tentatively named Wilson Ridge. A standard condition of approval for subdivision proposals on property that borders City limits within the Urban Services Intergovernmental Agreement area is that the property annex prior to final plat approval. There is no requirement that an applicant or property owner wait until receiving land use approval to annex the property. A parcel that is contiguous to the city limits may apply for annexation at any time. The total area represented in this annexation request is 2.68 acres and is contiguous to the present city limits along the western property boundary.

Vicinity Information:

The subject parcels are located at the southwest corner of SW 133rd and Bull Mountain Road.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the review of the subdivision request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. While the subdivision approval is complete but not yet effective, in the subdivision review staff found that the adjacent streets had adequate capacity, sewers will be extended from the Alberta Rider School site, storm drainage is conveyed through a new pipe to the Alberta Rider project, and water is provided by an existing 12" water line in Bull Mountain Road. The subdivision approval is contingent on the applicant providing these services prior to recording the final plat. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the

following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D's have been required with the subject parcels or subdivision approval. All public infrastructure listed above will have to be completed before the land is subdivided by a final subdivision plat. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no nonremonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Wilson Ridge. There is a long 10 foot wide "pole" that runs south from the parcels. This is a remnant of an easement for access that benefited other properties further south. That easement has been vacated on the subject parcel, so essentially what remains is a long strip of land. While odd in its configuration, the annexation is simply including the entire extent of the parcel as this policy requires. There is no attempt to include a cherry stem (typically achieved by annexing roads) with this subject request. All future lots within this subdivision will be inside city limits. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code

Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential development will be reviewed and conditioned as necessary as part of the Wilson Ridge subdivision review. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions will be addressed at the time the property develops. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

**TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS**

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

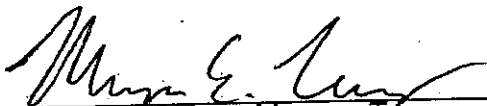
Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00002 - WILSON RIDGE ANNEXATION.


PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE


APPROVED BY: Richard Bewersdorff
Planning Manager

July 28, 2005
DATE

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2005-00002 – Wilson Ridge

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. There are two owners of the two properties that are in the territory proposed for annexation under ZCA2005-00002. Both owners have consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.
2. According to County voter registration information, two registered voters reside in the territory to be annexed under ZCA2005-00002. The City has received signed consents to annexation from both voters and therefore has the consents of a majority of the electors in the territory to be annexed.
3. Because the City has written consent of all owners of land and the majority of the electors in the territory proposed to be annexed under ZCA2005-00002, the City may proceed with annexation of that territory without a vote in the territory to be annexed, pursuant to ORS 222.125.

CITY ATTORNEY FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

Issues Raised By More Than One Person

HB 2484

1. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in the area to be annexed. House Bill 2484 is a very simple bill. It amends ORS 195.215, to make it clear that annexation plans under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.
 - A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.
 - B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

2. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.
 - A. HB 2722 does not apply to annexations.
 - B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be

annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

3. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.
 - A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.
 - B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.
 - C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.
 - D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

4. A few persons argued that the consents are not valid because they were coerced.
 - A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, and Al Jeck) testified that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation. If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council concludes that none of the consents were coerced.
 - B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

- C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

5. Some opponents have argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.
- A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.
- B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

6. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.
- A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.
- B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

7. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.
- A. A "double majority" vote is or will be required for annexation plans under ORS

Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

- B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

- 8. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.
 - A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that the boundaries are not irregular to the extent they create confusion in the provision of police services.
 - B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

- 9. Several persons commented that the annexations will not result in a regular boundary.
 - A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on

findings with respect to the following:

- a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or
 - b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;
 - c. The police department has commented on the annexation;
 - d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;
 - e. The annexation can be accommodated by the services listed in 10.1.1(a).
- B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

10. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.
 - A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.
 - B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

11. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

- A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.
- B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.
- C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.
- D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

- 12. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.
 - A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City.
 - B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is

not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

- A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.
- B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:
 - 1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
 - 2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.
- C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.
- D. Conversion table. Table 320.1 summarizes the conversion of the

County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate.

- D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

- 13. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.

- A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.

- B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

- 14. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.

- A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these

annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tom Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

15. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.
 - A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.
 - B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority over the area to be annexed. Land use authority includes the authority to impose conditions.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

16. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1 and 10.1.2, and CDC 18.320.020. The above findings address those arguments.
17. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.
18. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.
19. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers

in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

20. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.
21. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.
22. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.
23. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not relate to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority to annex. Ms Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

24. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kislning

25. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

26. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

27. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four

annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

28. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.
29. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

30. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.
31. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an annexation contract is signed. One purpose of ORS 222 is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.
32. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.
33. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

34. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 2.68 ACRES, APPROVING WILSON RIDGE ANNEXATION (ZCA2005-00002), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of two (2) parcels of land consisting of 2.68 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "City Attorney Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

Craig Dirksen, Mayor

Approved as to form:

City Attorney

Date

ORDINANCE NO. 2005-_____

ZCA2005-00002 Wilson Ridge Annexation



LEGAL DESCRIPTION
GRAHAM ANNEXATION

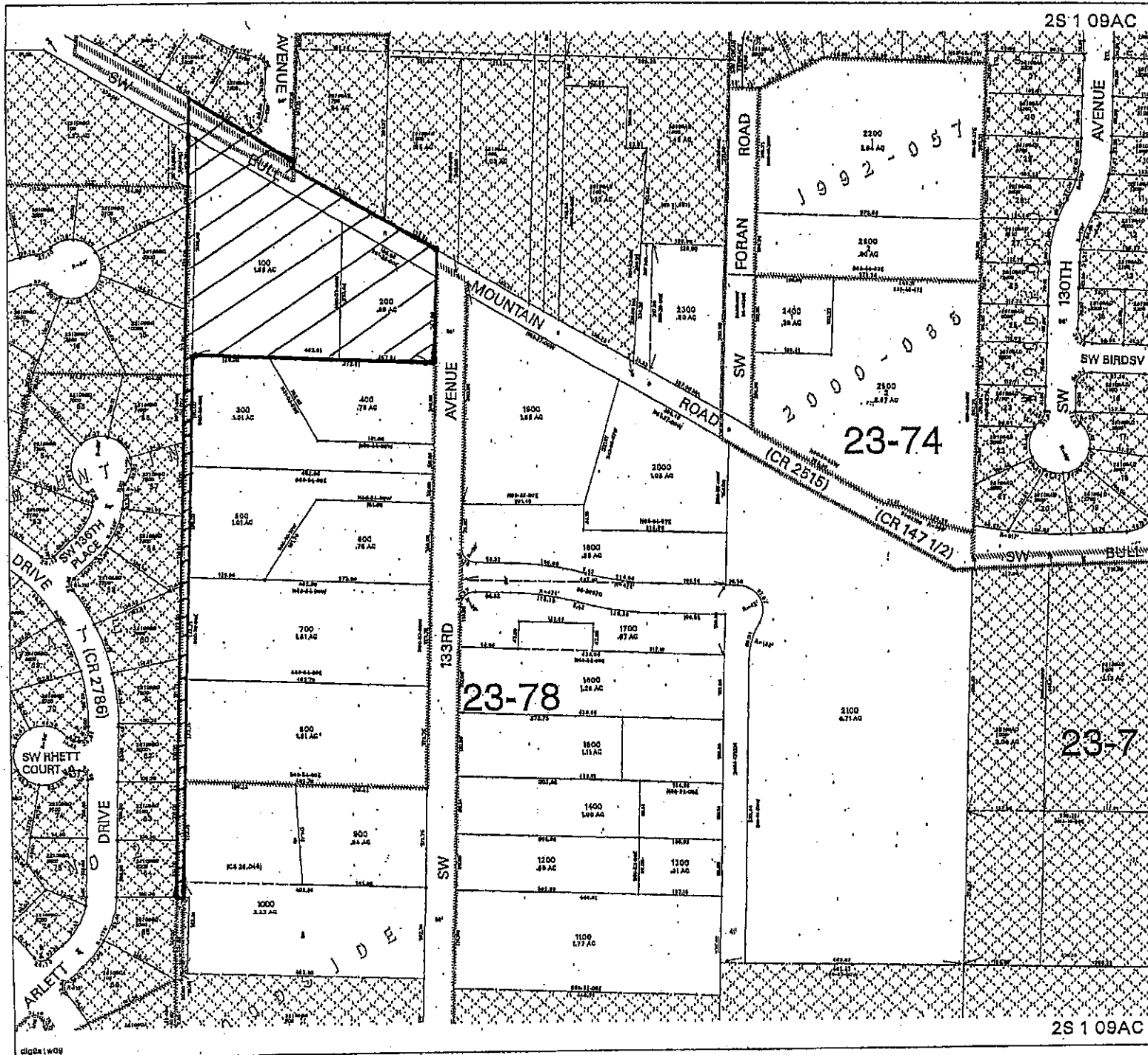
JOB NO. 328-027

A PARCEL OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 9, TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 13 OF THE PLAT OF "MOUNTAIN GATE" BEING THE SOUTHEAST CORNER OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 2004-06529; THENCE ALONG THE EAST LINE OF SAID PROPERTY AND SAID LINE EXTENDED, NORTH 01°31'37" EAST 132.47 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF S.W. BULL MOUNTAIN ROAD (COUNTY ROAD NO. 2515) LYING 20.00 FEET, RIGHT-ANGLE MEASURE, NORTHEASTERLY OF THE CENTERLINE; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 59°20'07" EAST 472.32 FEET TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF WESTERLY RIGHT-OF-WAY LINE OF SW 133RD AVENUE LYING 25.00 FEET, RIGHT-ANGLE MEASURE WEST OF THE CENTERLINE OF SW 133RD AVENUE; THENCE ALONG SAID EXTENSION AND WESTERLY RIGHT-OF-WAY LINE SOUTH 00°31'25" EAST 192.98 FEET TO THE SOUTHEAST CORNER OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 2000-04259; THENCE LEAVING SAID RIGHT-OF-WAY LINE ALONG THE SOUTH LINE OF SAID PROPERTY AND THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 2000-14685 NORTH 89° 43'44" WEST 402.59 FEET TO A POINT LYING 10.00 FEET RIGHT ANGLE MEASURE EAST OF THE EAST LINE OF THE PLAT OF "MOUNTAIN GATE" ; THENCE SOUTH 01° 31' 37" WEST 928.57 FEET PARALLEL TO THE EAST LINE OF "MOUNTAIN GATE" AND "MOUNTAIN GATE NO.2" ; THENCE LEAVING SAID LINE NORTH 88° 22' 19" WEST 10.00 FEET TO A THE SOUTHEAST CORNER LOT 64 "MOUNTAINGATE NO.2"; THENCE ALONG THE AFOREMENTIONED PLAT LINES NORTH 01° 31' 37" EAST 1213.81 FEET TO POINT OF BEGINNING.

CONTAINING APPROXIMATELY 3.104 ACRES.

THE BASIS OF BEARING FOR THIS DESCRIPTION IS WASHINGTON COUNTY SURVEY NO. 22,110



2S 1 09AC

WASHINGTON COUNTY OREGON
SW 1/4 NE 1/4 SECTION 08 T2S R1W W.M.
SCALE 1" = 100'

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us

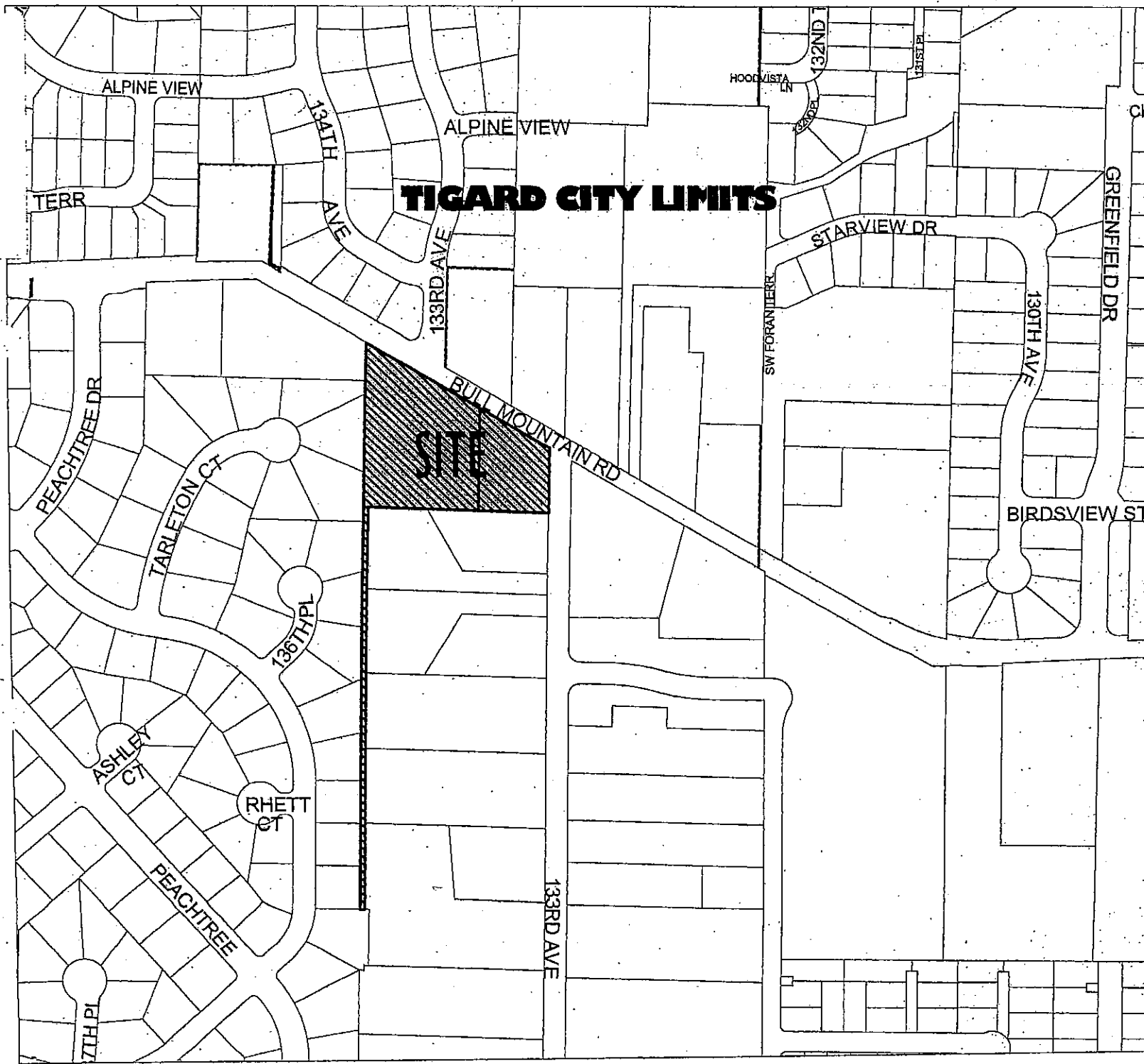
SECTION 08

**Assessment
Taxation**

PLOT DATE: November 30, 2004
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE

Map areas indicated by other tax parcels or cross-hatched
portions are for reference only and may not indicate the most
current property boundaries. Please consult the appropriate map
for the most current information.

TIGARD
2S 1 09AC



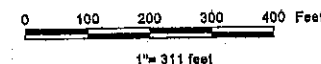
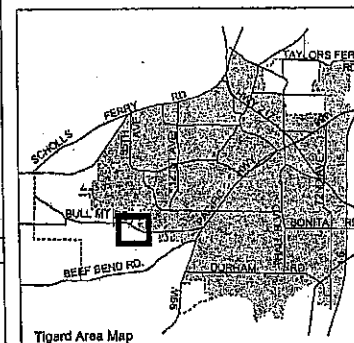
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

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ZCA2005-00002
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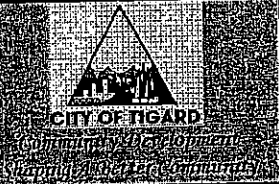
WILSON RIDGE ANNEXATION



Information on this map is for general location only and
should be verified with the Development Services Division.
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>

Agenda Item: 7
Hearing Date: August 9, 2005 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



SECTION I. APPLICATION SUMMARY

FILE NAME: ALBERTA RIDER/SUMMIT RIDGE ANNEXATION
CASE NO.: Zone Change Annexation (ZCA) ZCA2005-00003

OWNER(S): Various Owners

PROPOSAL: Annexation of 56 parcels containing approximately 20.75 acres into the City of Tigard.

CURRENT ZONING DESIGNATION: R-7, Medium Density Residential.

EQUIVALENT CITY ZONING DESIGNATION: R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: Alberta Rider School: WCTM 2S109AC, Tax Lot 2100 and 2S109AD, Tax Lot 1300; and Remaining Portions of Summit Ridge Subdivision: WCTM 2S109DA, Tax Lots 8500, 8600, 8700, 8800, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13400 and 13500, and WCTM 2S109DB, Tax Lots 1000, 1900, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900 and 4000.

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Vicinity Information:

The subject parcels are located at the southeast corner of SW 133rd and Bull Mountain Road, and to the south in the Summit Ridge Subdivision, west of SW Greenfield, north of SW Beef Bend Road.

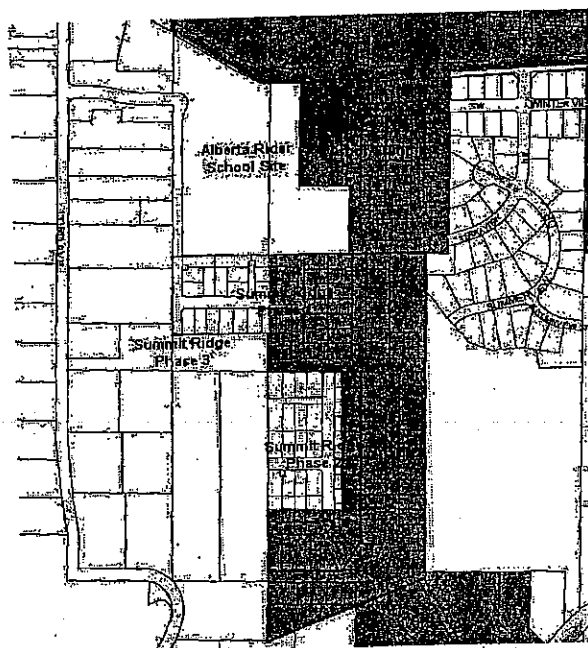
Site Information and Proposal Description:

There are essentially three areas involved in this particular annexation request: the Alberta Rider School site; the undeveloped portion (Phase 3) of Summit Ridge; and the remaining portions of Summit Ridge (Phase 1 and 2) that were not previously annexed last year. There are a total of 56 properties involved in this request totaling approximately 20.75 acres.

For the first area, the school site, as a condition of the Conditional Use approval, the applicant was required to annex the property prior to final building permit inspection. This was done to allow the school to proceed in a timely fashion on their construction schedule while going through the process to annex. The intention is that the annexation will be complete before the school needs to open, for if the annexation is not approved in time, final inspections can't be conducted and the school cannot be occupied.

The second area, Phase 3 of Summit Ridge, the subdivision was required to annex prior to recording the final plat for the lots. This is a standard condition that is applied to properties requesting development approval when bordering the city limits.

For the third area, Phases 1 and 2 of Summit Ridge, portions of this subdivision are inside and some are outside the city limits. During the review of Summit Ridge Phase 1 and 2, the property did not abut the city limits. The City required that the applicant sign a consent form for future annexation when the city limits did abut the site. During an annexation hearing to annex the Arbor Summit subdivision immediately north of Summit Ridge, the City included one of the parcels of Summit Ridge through a double majority method. The annexation occurred and was finalized before the plats for those phases were recorded. The result was that some of the lots that were created through those plats ended up straddling the city limit boundaries. See the following map.



SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the review of the subdivision and conditional use request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. In the review of the Alberta Rider School and Summit Ridge subdivision, staff found that the adjacent streets had adequate capacity with completion of required improvements, sewers will be extended up from Bella Vista subdivision on the south, through Summit Ridge and up through the Alberta Rider School site, storm drainage is conveyed through a new pipe from Bella Vista to the Alberta Rider project, and water is provided by an existing 12" water line in Bull Mountain Road. The subdivision approval is contingent on the applicant providing these services prior to recording the final plat. The conditional use approval also required completion of these utilities and facilities. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D's have been required with the subject parcels or land use approvals. All public infrastructure listed above will have to be completed before the land is subdivided by a final subdivision plat or final inspection occurs on the school building. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no nonremonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary in the Bull Mountain area. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. In fact, this annexation is in part to address a situation where parcels fall both inside and outside the city limits. Specific jurisdiction for a number of services is clouded by the partial inclusion of these properties. Their formation is the result of disjointed annexation and plat approval timing. The subject annexation will eliminate this confusion and implement the original requirements placed on the subdivision regarding annexation of the property. The proposed annexation will incorporate the entire subdivision boundary for Phase 3 of Summit Ridge. In addition, the entire property where the Alberta Rider school site sits is also included in this request. Boundaries of this request follow logical extensions to the edge of the properties, except where the school abuts Bull Mountain Road. In that location the annexation will include the remaining portion of that road that is not presently in the city limits. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code

Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential and institutional development has been reviewed and conditioned as necessary as part of the Summit Ridge subdivision and Alberta Rider reviews. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions have been addressed in the previous land use reviews. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject properties are in the Urban Service Area and are zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

**TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS**

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	CP Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	LT Light Industrial	Light Industrial

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

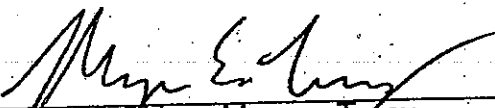
Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00003 - ALBERTA RIDER/SUMMIT RIDGE ANNEXATION.


PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE



07/28/05

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2005-00003 – Alberta Rider / Summit Ridge

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. With the exception of one person who has a life estate in one portion of the area originally proposed for annexation, all of the owners of land in the territory proposed for annexation under ZCA2005-00003 have consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.
2. According to County voter registration information, there is one registered voter residing in the territory originally proposed to be annexed under ZCA2005-00003. That elector is the same person who has a life estate in a property within the area originally proposed for annexation. This elector has not signed a petition or consent to annex. Therefore, the portion of the proposed annexation territory where the elector resides and has a life estate cannot be included in the proposed annexation without an election.
3. The City Council determined to exclude the area where the elector/life estate holder resides. The annexation of the remaining area may proceed without a vote in the territory to be annexed pursuant to ORS 222.125 because the City has the consent of all owners and there are no electors in the area now proposed for annexation.

CITY ATTORNEY FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

Issues Raised By More Than One Person

HB 2484

1. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in the area to be annexed. House Bill 2484 is a very simple bill. It amends ORS 195.215, to make it clear that annexation plans under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.
 - A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.
 - B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

2. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.
 - A. HB 2722 does not apply to annexations.
 - B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be

annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

3. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.
 - A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.
 - B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.
 - C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.
 - D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

4. A few persons argued that the consents are not valid because they were coerced.
 - A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, and Al Jeck) testified that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation. If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council concludes that none of the consents were coerced.
 - B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

- C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

5. Some opponents have argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.
- A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.
- B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

6. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.
- A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.
- B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

7. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.
- A. A "double majority" vote is or will be required for annexation plans under ORS

Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

- B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

- 8. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.
 - A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that the boundaries are not irregular to the extent they create confusion in the provision of police services.
 - B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

- 9. Several persons commented that the annexations will not result in a regular boundary.
 - A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on

findings with respect to the following:

- a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or
 - b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;
 - c. The police department has commented on the annexation;
 - d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;
 - e. The annexation can be accommodated by the services listed in 10.1.1(a).
- B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

10. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.
 - A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.
 - B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

11. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

- A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.
- B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.
- C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.
- D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

- 12. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.
 - A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City.
 - B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is

not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

- A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.
- B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:
 - 1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
 - 2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.
- C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.
- D. Conversion table. Table 320.1 summarizes the conversion of the

County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate.

- D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

- 13. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.
 - A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.
 - B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

- 14. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.
 - A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these

annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tom Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

15. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.
 - A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.
 - B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority over the area to be annexed. Land use authority includes the authority to impose conditions.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

16. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1 and 10.1.2, and CDC 18.320.020. The above findings address those arguments.
17. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.
18. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.
19. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers

in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

20. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.
21. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.
22. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.
23. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not relate to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority to annex. Ms Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

24. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kisling

25. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

26. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

27. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four

annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

28. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.
29. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

30. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.
31. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an annexation contract is signed. One purpose of ORS 222 is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.
32. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.
33. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

34. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 20.75 ACRES, APPROVING ALBERTA RIDER ELEMENTARY SCHOOL/SUMMIT RIDGE ANNEXATION (ZCA2005-00003), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of 38 parcels and portions of 18 additional parcels of land consisting of a total of 20.75 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "City Attorney Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached REVISED Exhibit "A" and shown in REVISED Exhibit "B" and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

APPROVED: By Tigard City Council this _____ day of _____, 2005.

Cathy Wheatley, City Recorder

Craig Dirksen, Mayor

Approved as to form:

City Attorney

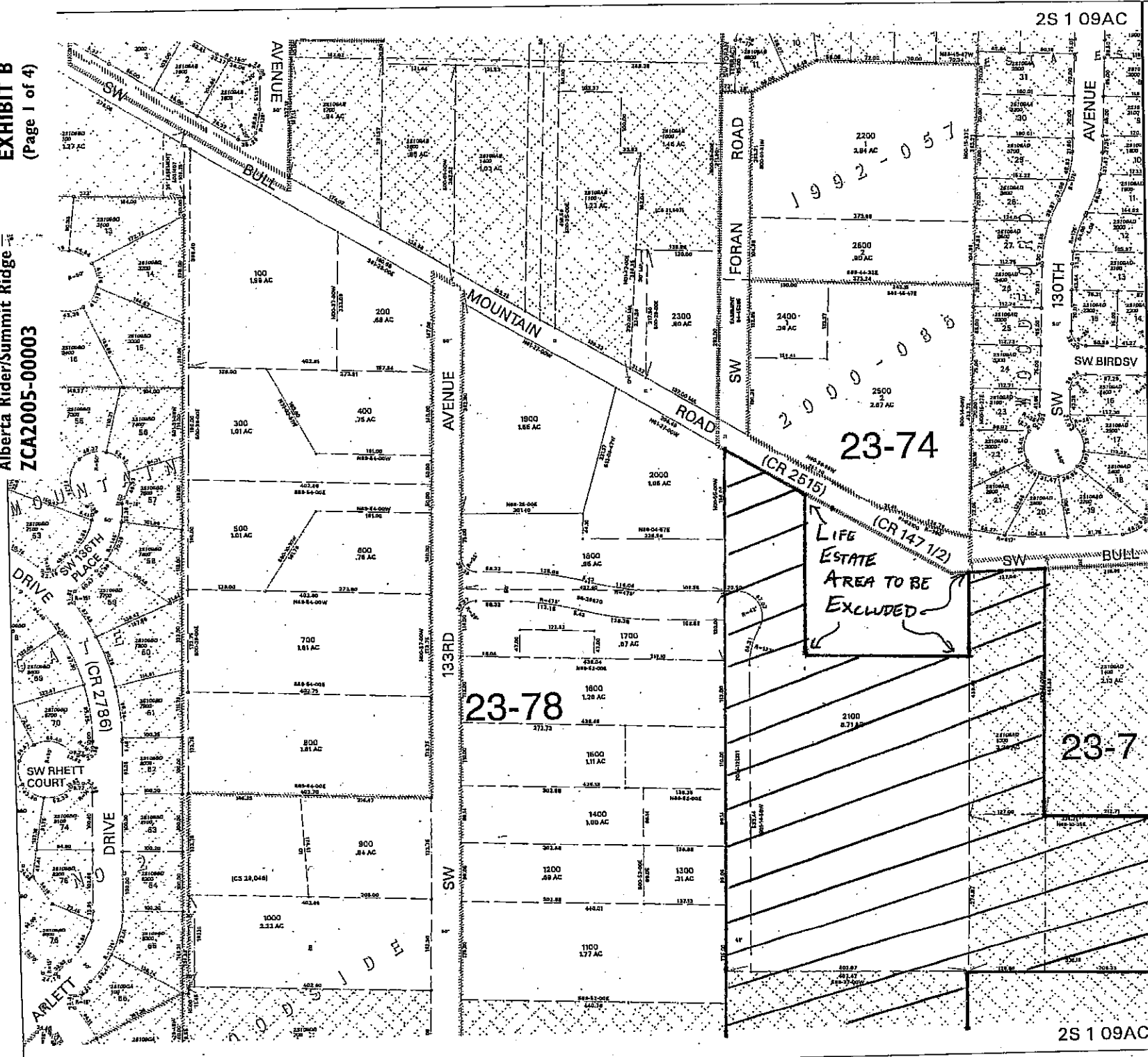
Date

**Revised Legal Descriptions and Map of Annexation Territory
for ZCA 2005-00003 – Alberta Rider/ Summit Ridge**

A tract of land situated in the Section 9, Township 2 South Range 1 West Willamette Meridian described as follows:

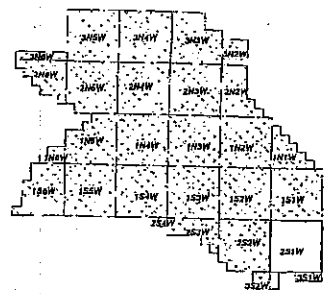
Commencing at a point northwest corner of the subdivision plat of Arlington Heights; thence N 01° 57' 48" E a distance of 13.03 feet; thence S 88° 04' 30" W a distance of 625.20 feet to **The True point of Beginning** of the Annexation; thence S 01° 56' 56" W a distance of 426.22 feet; thence S 88° 56' 17" E a distance of 212.83 feet; thence S 02° 00' 00" W a distance of 274.61 feet; thence N 88° 49' 24" W a distance of 336.20 feet; thence S 01° 15' 49" W a distance of 475.68 feet; thence S 87° 59' 46" E a distance of 303.50 feet; thence S 01° 15' 46" W a distance of 561.57 feet; thence N 87° 59' 46" W a distance of 303.50 feet; thence N 01° 15' 46" E a distance of 561.57; thence N 87° 59' 46" W a distance of 846 feet to the easterly right-of-way of SW 133rd Ave; thence N 01° 33' 29" E, along said right-of-way, a distance of 50.00 feet; thence S 87° 59' 46" E a distance of 221.31 feet; thence N 01° 21' 36" E a distance of 140.04 feet; thence S 87° 58' 20" E a distance of 220.90 feet; thence N 01° 15' 49" E a distance of 1185.00 feet to the southerly right-of-way of SW Bull Mountain Road; thence S 59° 18' 32" E, along said right-of-way, a distance of 433.01 feet; thence N 88° 04' 30" E, along said right-of-way, a distance of 158.32 feet to the point of beginning.

Excepting therefrom the North 277 feet of the East 277 feet of that property described in Document Number 99114503.



2S 1 09AC

2S 1 09AC



WASHINGTON COUNTY OREGON
SW1/4 NE1/4 SECTION 09 T2S RTW W.M.
SCALE 1" = 100'

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us

BB	BA	AB	AA
BC	BD	AC	AD
CB	CA	DB	DA
CC	CD	DC	DD

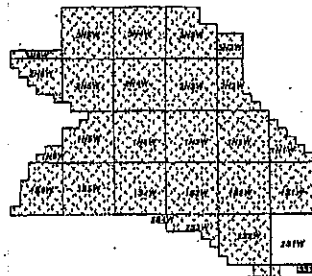
Other maps for this annexation territory were not changed. This shows area that was excluded.

Assessment
CARTOGRAPHY
Taxation


PLOT DATE: November 30, 2004
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE
Map areas delineated by either grey shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

2S 1 09AC

TIGARD
2S 1 09AC



36	35	34	33	32	31	30	29
28	27	26	25	24	23	22	21
20	19	18	17	16	15	14	13
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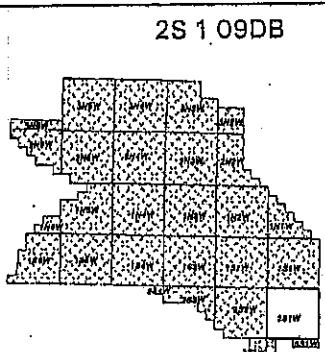
Assessment
CHARTOGRAPHY
 Taxation

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26-10045 TIGARD

ZCA2005-00003

(Page 3 of 4)



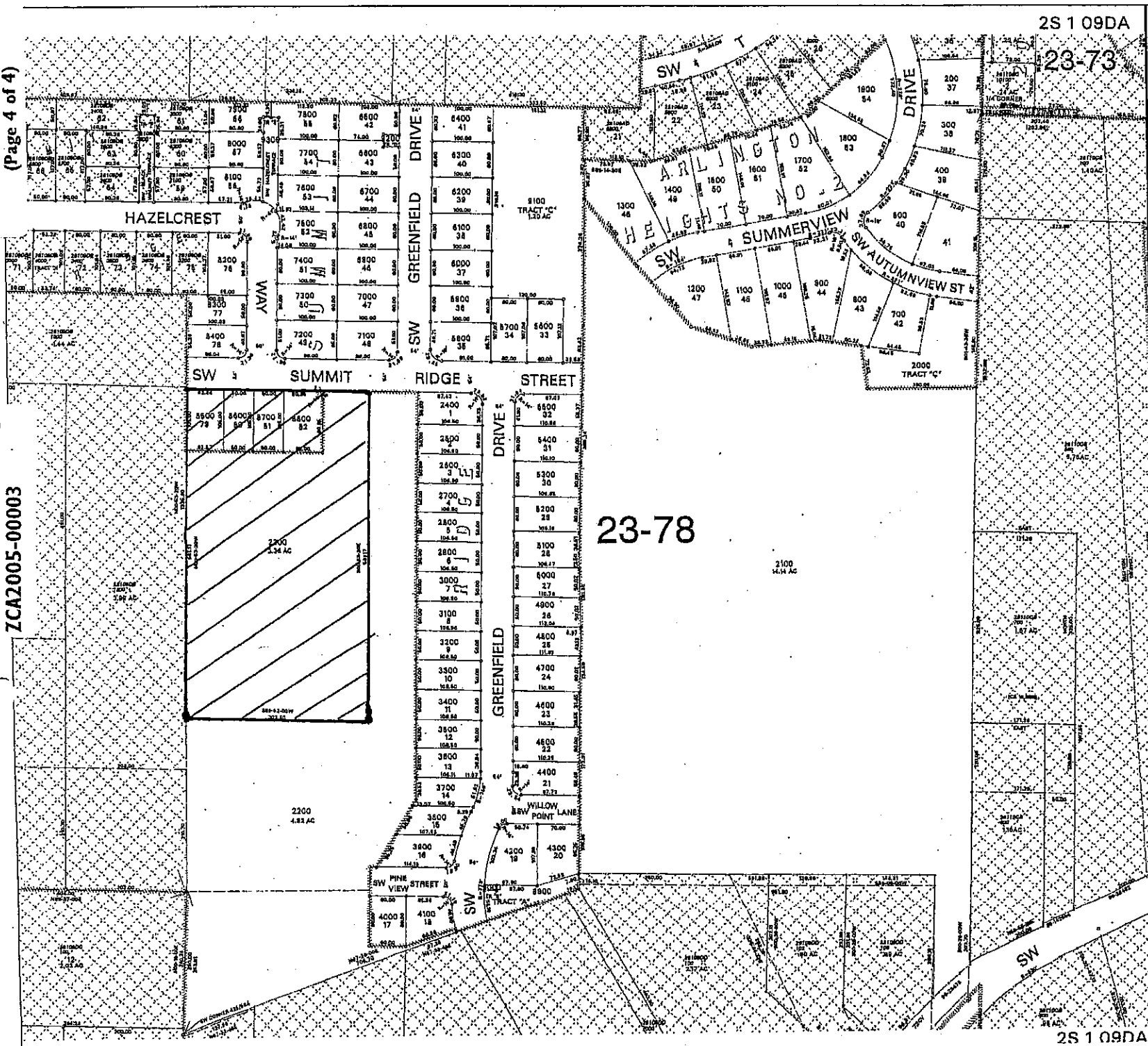
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25	24	23	22	21	20	19	18	17	16
15	14	13	12	11	10	9	8	7	6
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Assessment
CARTOGRAPHY
Taxation

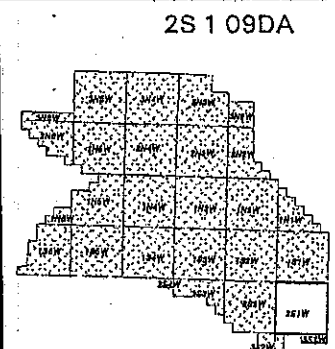
PLOT DATE: January 13, 2005
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE

Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

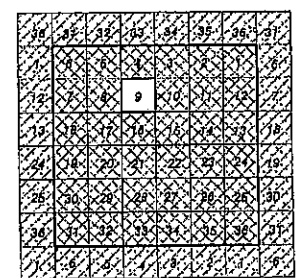


2S 1 09DA
23-73

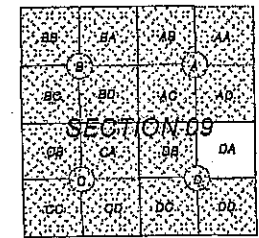
23-78



WASHINGTON COUNTY OREGON
NE1/4 SE1/4 SECTION 08 T2S R1W W.M.
SCALE 1" = 100'



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www.co.washington.or.us



Cancelled Taxlots For: 2S109DA
600,100,

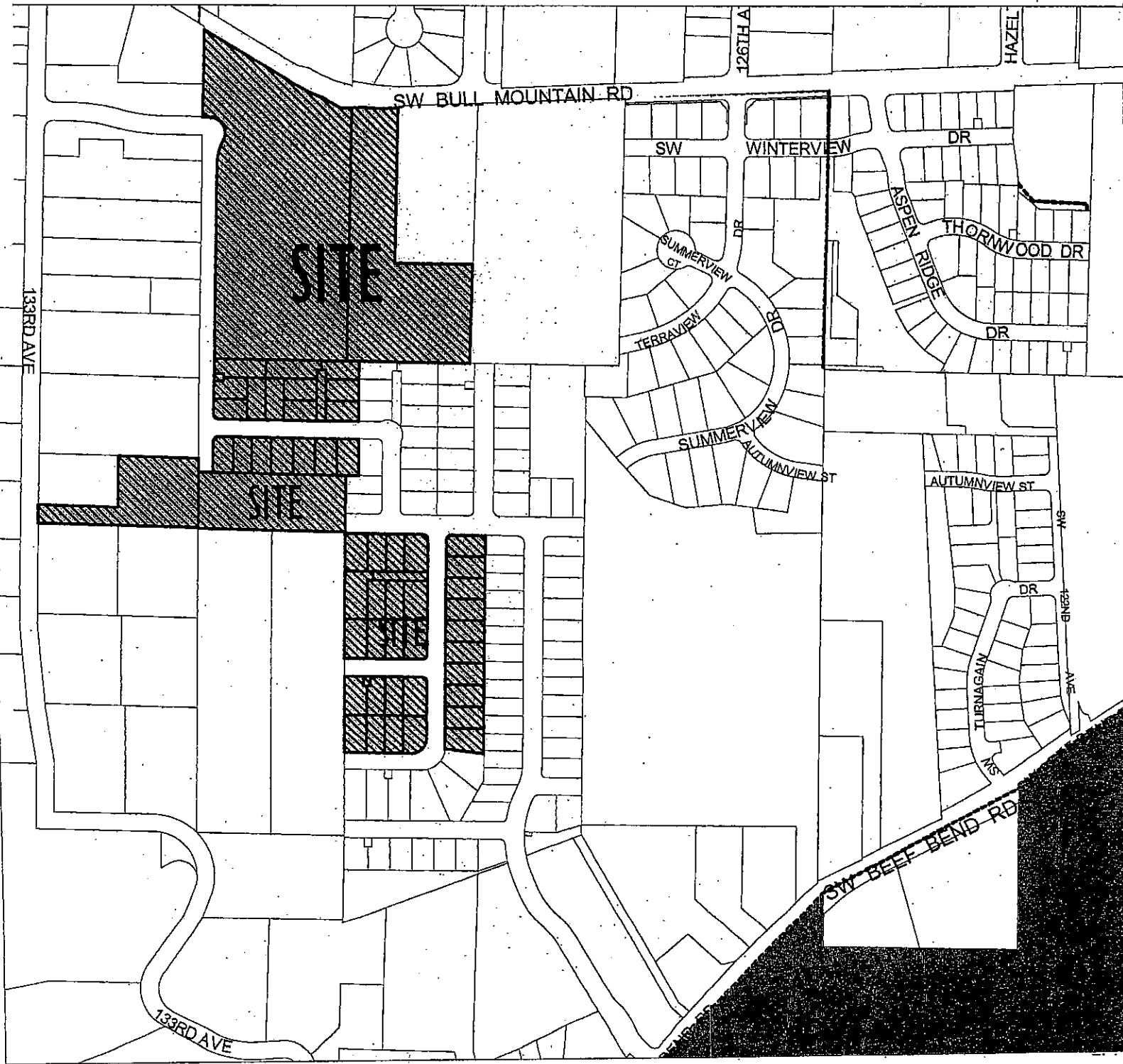


PLOT DATE: January 20, 2005
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE

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2S 1 09DA

2S 1 09DA



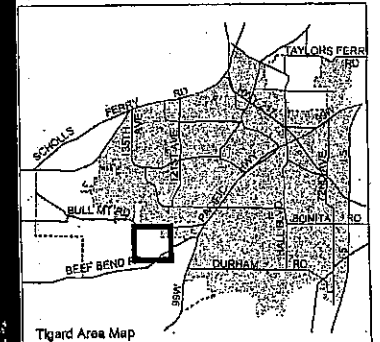
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

=====
ZCA2005-00003
=====

ALBERTA RIDER SCHOOL/
SUMMIT RIDGE SUB.
ANNEXATION



0 100 200 300 400 500 Feet

1" = 382 feet



Information on this map is for general location only and
should be verified with the Development Services Division,
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>